

PUTTING CENTRAL REGISTERS TO WORK: USING  
MODERN MANAGEMENT INFORMATION  
SYSTEMS TO IMPROVE CHILD  
PROTECTIVE SERVICES\*

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*"The horror of that moment," the King went on, "I shall never, never forget!"*

*"You will, though," the Queen said, "if you don't make a memorandum of it."<sup>1</sup>*

I. THE DEVELOPMENT OF CENTRAL REGISTER SYSTEMS

Approximately one million children are maltreated by their parents each year. As many as 200,000 of these children are physically abused; 60,000 to 100,000 are sexually abused; the remainder are neglected. Every year, more than 2,000 children die in circumstances suggestive of abuse or neglect.<sup>2</sup>

Major progress is being made by states and communities in upgrading their child protective capacities. Statistics, definitions, and procedures are being standardized and improved. In many counties, health, social service, education and law enforcement agencies and individual professionals now are seeing themselves as jointly, not separately, responsible for protecting children and, whenever possible, preserving and strengthening families. More concretely, new resources have been identified, useful family support systems have been developed, and some simplistic definitions and solutions have been discarded. The amount and quality of child abuse and neglect services

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1. L. CARROLL, THROUGH THE LOOKING GLASS.

2. U.S. National Center on Child Abuse and Neglect, Department of Health, Education and Welfare, CHILD ABUSE AND NEGLECT REPORTS 7 (February, 1977).

has been improved greatly. The rapid rise in the number of states eligible for state grants under the Federal Child Abuse Prevention and Treatment Act,<sup>3</sup> has guaranteed that at least forty-two states promptly investigate cases of neglect as well as abuse; forty-two states provide a *guardian ad litem* for all children involved in child protective court cases; forty-two states assure the confidentiality of case records; and forty-two states provide for outside, impartial investigation of reports of institutional abuse and neglect. The number of public and private programs working with abused and neglected children and their parents has increased substantially. About fifty percent of the existing treatment programs in the country have opened since 1973.<sup>4</sup>

But we still face enormous gaps between what must be done to protect children and what is being done. For far too many abused and neglected children, existing child protective systems are inadequate to the life-saving tasks assigned to them. In almost every community in the nation, there are inadequacies, breakdowns, and gaps in the child protective process. Detection and reporting are haphazard and incomplete. Protective investigations are often poorly performed, and suitable treatment programs reach only a small proportion of the children and families needing help. Too many endangered children and families are processed through the system with a paper promise of help. As many as three quarters of those children who die in circumstances where abuse or neglect is suspected are known to the authorities before their deaths.<sup>5</sup>

We may not be able to eradicate child maltreatment until we remedy its underlying causes, but we have an urgent responsibility to respond today to the cries of suffering children. Unless we do so, we consign them to a childhood of continuing peril and deprivation and, for many, a lifetime of hidden fury which may give vent to open violence. Once abuse or neglect is discovered, we should be able to take firm and effective protective action to prevent a recurrence through rehabilitative and ameliorative treatment or, when necessary, the removal of an endangered child from an unsafe home.

According to conventional wisdom, child protective programs fail because of a dreadful lack of facilities, protective workers, social work-

3. 42 U.S.C. § 5101 (Supp. V 1975), *as amended by* Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Pub. L. No. 95-266.

4. These are almost equally divided between public and private agencies. Data on file at the National Center on Child Abuse and Neglect, Department of Health, Education and Welfare, Washington, D.C.

5. *See, e.g.*, NEW YORK STATE ASSEMBLY SELECT COMMITTEE ON CHILD ABUSE, REPORT (1972). *See also* Helfer & Kempe, THE BATTERED CHILD App. C (2d ed. 1974).

ers, judges, shelters, probation workers, and all types of treatment services. Indeed, for many communities, the need for more financial resources to support child protective efforts has reached crisis proportions. But existing facilities and services, if properly utilized, could go a long way toward filling the need to protect children. Unless the underlying framework of child protective efforts is strengthened, it is questionable whether large infusions of additional funds would have optimal effect in many states.

This article concerns one management weakness from which many child protective agencies suffer, namely, the failure to take advantage of the scientific and technological revolution which so radically has changed most of American society during the past two decades. Technologically, most social service agencies, including child protective agencies, are fifty years or more out of date. To paraphrase the words of The President's Commission On Crime: Even small businesses employ modern technological devices and systems, but the nation's child protective network is closer to the era of the quill pen than it is to the age of electronic data processing.<sup>6</sup>

One way that states have sought to use modern technology to improve their child protective systems has been through the installation of a "Central Register of Child Protection Cases."

The rapid proliferation of central registers has been extraordinary. The first registers were established in 1964 in Denver, Los Angeles, and New York City as a result of administrative action by medical and social service groups. In 1965, two more cities, Cincinnati and Milwaukee, developed registers.<sup>7</sup> In 1965-66, four states established registers by legislation: California, Illinois, Virginia, and Maryland.<sup>8</sup> An additional four states did so by administrative decision: Colorado, Florida, North Dakota, and Utah.<sup>9</sup> By late 1970, nineteen states had legislatively established central registers,<sup>10</sup> an almost four hundred percent increase in five years; twenty-six states had administratively established registers. Two years later thirty-three states had legislation creating central registers<sup>11</sup> (an additional increase of over seventy percent),

6. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* 245 (1967).

7. Paulsen, *Child Abuse Reporting Laws: The Shape of the Legislation*, 67 COLUM. L. REV. 28-30 (1967) [hereinafter cited as Paulsen].

8. *Id.* at 26-28.

9. *Id.* at 30.

10. Fraser, *Towards a More Practical Central Registry*, 51 DEN. L.J. 511 n.15 [hereinafter cited as Fraser].

11. *Id.* See also V. DeFrancis & C. Lucht, *CHILD ABUSE LEGISLATION IN THE 1970'S* 178 (Rev. ed. 1974) [hereinafter cited as DeFrancis & Lucht]. The states were: ALASKA STAT. §

while another thirteen states had administratively established child abuse registers.<sup>12</sup> Since 1974, forty-six states, the District of Columbia, Puerto Rico, American Samoa, Samoa, and Guam have had some kind of central register of child protection cases.<sup>13</sup> Of these, thirty-nine states, the District of Columbia, American Samoa, and Guam now have legislation establishing a central register.<sup>14</sup> Although in California the register is maintained by a law enforcement agency, the Department of Justice,<sup>15</sup> in most states it is maintained by the state social service agency.

The idea for a central register of child abuse reports apparently grew from two disparate conceptual and professional frameworks. One was the medical conception of a register to assist in diagnosing suspicious injuries. The other was the social science conception of a register to assist in understanding the problem of child abuse by providing statistical data. But the exact origins of the idea are unclear. None of the usual ways in which a major new idea is developed, announced, and promoted provided the impetus for the rapid adoption of central registers. No single or outstanding research finding, publication, or national group introduced the concept or can be credited with its success—if rapid adoption by states is a measure of success. None of the early model child abuse reporting laws contained any reference to central registers for reports of child abuse. In fact, until 1974, the only nation-wide group to make a specific recommendation for a central register appears to have been the Committee on the Infant and Pre-School Child of the American Academy of Pediatrics, which, in 1966,

47.17.040 (1975); ARIZ. REV. STAT. § 8-546.03 (B) (1974); ARK. STAT. ANN. § 42-818 (Supp. 1975); CAL. PENAL CODE § 11161.5 (West Supp. 1978); COLO. REV. STAT. § 19-10-114 (Cum. Supp. 1976); CONN. GEN. STAT. ANN. § 17-38a(g) (Supp. 1977); FLA. STAT. ANN. § 827.07(7) (West 1976); HAW. REV. STAT. § 350(2) (1972); ILL. REV. STAT. ch. 23, § 2061 (Supp. 1977); KAN. STAT. § 38-721 (Supp. 1976); LA. REV. STAT. ANN. § 14-403(H) (West Supp. 1977); MD. ANN. CODE art. 27, § 35A(i) (1976); MASS. GEN. LAWS ANN. ch. 119, § 51(F) (West Supp. 1978-79); MICH. STAT. ANN. § 25.248(7) (Supp. 1977); MO. ANN. STAT. § 210.145(2) (Vernon Supp. 1977); MONT. REV. CODES ANN. § 10-1305 (Cum. Supp. 1977); NEB. REV. STAT. § 28-1506 (1975); N.H. REV. STAT. ANN. § 169-44 (1976); N.J. STAT. ANN. § 9:6-8:11 (West 1973); N.Y. SOC. SERV. LAW § 422 (McKinney 1976 & Supp. 1977-78); N.C. GEN. STAT. §§ 110-122 (1978); OHIO REV. CODE ANN. § 2151-421 (Page Supp. 1977); 11 PA. CONS. STAT. ANN. § 2214 (Purdon Supp. 1977); R.I. GEN. LAWS § 40-11-7 (Supp. 1976); S.D. COMPILED LAWS ANN. § 26-10-12.2 (1976); TENN. CODE ANN. § 37-12107 (Supp. 1977); TEX. FAM. CODE ANN. tit. 2, § 34-06 (Vernon 1975); VA. CODE § 63.1-248.8 (Cum. Supp. 1977); WASH. REV. CODE ANN. § 26.44.070 (Supp. 1977); WYO. STAT. § 14-28.13 (Cum. Supp. 1973).

12. DeFrancis & Lucht, *supra* note 11, at 178.

13. The exceptions are Minnesota, New Mexico and Utah. At this writing, West Virginia is establishing a register by administrative decision. Maine's child protective information system is part of its computerized Social Security Act Title XX data system.

14. *E.g.*, FLA. STAT. ANN. § 827.07(7) (West 1976); HAW. REV. STAT. § 350(2) (1972); NEB. REV. STAT. § 28-1506 (1975); N.Y. SOC. SERV. LAW § 422 (McKinney 1976 & Supp. 1977-78).

15. CAL. PENAL CODE § 11110 (West Supp. 1978).

proposed that the agency which receives legally mandated reports of child abuse "should establish a central register of all such cases." Moreover, since the concept of the central register first appeared in 1963, only a handful of articles on the subject have been published.<sup>16</sup>

As a result of this obscure history, central registers and their purposes, functions, and procedures never have been presented fully for public and professional examination. As one commentator explains:

In the tremendous amount of literature about child abuse and neglect . . . there is a very little about registries, their organization, operation, and utilization. Communication has been on a one-to-one basis, usually by mail, when a registry was getting started. Once in a while there would be a flurry of interchange when a problem would occur. Certainly, the lack of adequate communication and exchange of practical experience and know-how was delayed, if not been detrimental to, the development and operation of registries as an integral part in the prevention and treatment of child abuse and neglect.<sup>17</sup>

Registers vary in scope and purpose from those that merely collect monthly statistical reports to those that are used for case monitoring and management planning. In one state, the central register is a handful of three-by-five index cards in a shoe-box file; in another, it is a sophisticated, "on-line," electronic data processing system with remote terminals for input and access through cathode ray tubes (T.V. screens) and computer printouts. In some states, reports are made to local agencies which forward copies to the statewide central register; in others, reports are made directly to the register. Thus, the fact that a state has a central register does not say very much about what kind of facility the state has. Indeed, there is not even agreement on terminology.<sup>18</sup>

This article discusses the use of modern information management technology to strengthen child protective systems. Such systems usually

16. E.g., Besharov, *Putting Central Registers to Work*, 6 CHILD TODAY 9 (1977); EDUCATION COMMISSION OF THE STATES, *Child Abuse and Neglect in the States: A Digest of Critical Elements of Reporting and Central Registries*, Report No. 83 (1976); Fraser, *supra* note 10, at 509; Garinger & Hyde, *Child Abuse and the Central Registry*, in Ebeling & Hill, CHILD ABUSE: INTERVENTION AND TREATMENT ACTION 171 (1975); Ireland, *The Mission and Functions of Central Registries*, Fifth National Symposium on Child Abuse, American Humane Association (1975) [hereinafter cited as Ireland (1975)]; Ireland, *A Registry on Child Abuse*, 13 CHILDREN 113 (1966) [hereinafter cited as Ireland (1966)]; Paulsen, *supra* note 7, at 1, 24-31; Whiting, *The Central Registry for Child Abuse Cases: Rethinking Basic Assumptions*, 56 CHILD WELFARE 761 (1977); cf. Rowe, *A Hospital Program for the Detection and Registration of Abused and Neglected Children*, 282 N. ENG. J. OF MED. 950 (1970).

17. Ireland (1975), *supra* note 16, at 1.

18. Should the system be described as a "central registry" or "central register"? After consultation with The Random House Dictionary (unabr. ed. 1969), which defined a registry as the place in which a register is kept, the latter term was adopted for this article, but the reader is free to disagree.

are called "Central Registers" because usually they are an upgraded (second generation) version of the central registers which most states have had for a decade. As a result, this second generation of central registers and the first are often confused. This article uses the term in both senses, but conceptualizes a second generation central register as a multi-purpose information system with, at its center, a county-wide or state-wide facility which receives, stores, monitors, and analyzes reports of known and suspected child abuse and neglect.<sup>19</sup> This article explores how states can put these second generation central registers to work improving child protective services. It does so by examining the experiences of a number of other states and by presenting the considerations involved in deciding whether and how to upgrade a central register into a comprehensive management information system. This article also discusses the interplay between the potential uses of central registers and the real dangers of abuse created by such data systems.

Central registers have been criticized because they raise genuine concerns over unwarranted record keeping and potential "Big Brotherism" and because, in the past, many registers have not proved useful. But those who say that there should be no central registers—either because registers are dangerous or because they do not work—misunderstand a register's nature and functions. A central register fundamentally is nothing more than an index of cases handled by an agency or a number of agencies. Those who advocate the abolition of central registers do not realize that all agencies—as bureaucratic institutions—must have an index of cases if they are to function coherently. Without an index, or register, there would be no way of knowing whether a case was currently being handled by an agency without polling every member of the agency's staff each time a letter or referral arrived at the agency. Every worker then would have to consult his own individual index of cases or rely on his memory. Such a chaotic arrangement would cause far greater harm to children and families needing help than would a centralized index.

Thus, there can be no question about the need for some type of register; no service agency could function without a master index. But there is reasonable dispute about how a register should be organized and operated, who should have access to it, what functions it should perform, and especially over whether it should be state-wide in scope.<sup>20</sup>

19. This article includes the concept of reporting hotlines within the term "central register." However, although a central register ordinarily will be housed in a statewide telephone reporting facility and will be intimately involved in its operations and capabilities, it need not be, and many states do not operate registers in this way.

20. See text accompanying notes 91-95, *infra*.

Central registers take on their character—either good or bad, successful or unsuccessful—according to the data they contain, how the data is maintained, who has access to the data, and how those who have access to the data use it.

Now is a good time to review the operations of central registers and to reconsider the need for them. Existing register systems are in flux. Nationwide, interest in improving services to abused and neglected children is greater than ever before. There were no child abuse reporting laws as we know them until 1964, and yet, in the space of five years, every state adopted one.<sup>21</sup> America's child abuse laws are still changing radically. Every year, ten or fifteen states amend their child abuse laws. As reporting laws become more comprehensive and more detailed, the provisions concerning central registers also are becoming more elaborate and more specific. Often, the child abuse reporting law is amended to require that all reports—whether covered by the mandatory reporting law or not must be made to an upgraded, state-wide register system, which is then responsible for relaying the case to a local agency for investigation.

The relatively new Federal Child Abuse Prevention and Treatment Act of 1974,<sup>22</sup> is increasing the rate of change. The Act provides for demonstration programs and grants-in-aid to the states to develop, strengthen, and carry out child protective programs. Since federal funds for technical assistance and development have become available, many states have established as a priority the further refinement of central registers. The American Humane Association's National Study of Officially Reported Child Neglect and Abuse also is having a catalytic effect in moving states to vitalize their register and record-keeping systems. Moreover, the rapidly growing computerization of social service records, prompted by H.E.W. Social Service Reporting requirements, is encouraging many states to expand and computerize their child abuse register records as part of the same budgetary and programmatic package.

Just as there is no "best" way to offer child protective services, neither is there one "true" way to operate a central register. Each state must re-think the concept of the central register in light of its own needs and capabilities and then design its register system to fit those circumstances. Facile and inflexible generalizations that homogenize our large and varied country are counterproductive and dangerous.

21. DeFrancis & Lucht, *supra* note 11, at 6.

22. 42 U.S.C. § 5101 (Supp. V 1975), as amended by Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Pub. L. No. 95-266.

As the Federal Regulations for the Child Abuse and Neglect Prevention and Treatment Program point out, there is a "need to allow and encourage flexibility and innovation in light of the diverse local conditions found from State to State and community to community."<sup>23</sup> For example, among other factors, the operations of a state's central register are inextricably intertwined with its child abuse reporting law.

How a Central Registry will operate depends on a variety of factors, but basically it must be related to the law governing reporting of suspected abuse. The points in the law which are relevant to the operation of a Registry are: (1) What shall be reported? (2) Who shall report? (3) To whom shall they report? (4) When shall they report? (5) What shall be done after receipt of the report?<sup>24</sup>

Until recently, most states laws have not been specific about the operations of their registers. Generally, most laws only provide that a specified state agency should "maintain a central register of reports" and, perhaps, go on to recite its diagnostic and/or statistical purpose, sometimes also describing what information is to be kept in the register. The register's actual organization and mode of operation is left to administrative decision.<sup>25</sup>

Recently, however, there has been a trend toward the greater formalization of central register procedures, either through legislation,<sup>26</sup> or through binding administrative regulation.<sup>27</sup> While some state administrators feel strongly that legislation detailing register functioning is unnecessary, experience suggests that the proper operation of the system is best assured within the framework of legislative authorizations and mandates. Only through legislation can the intent of those who plan the register be authoritatively specified, and only in this way can there be reasonable assurance that the contemplated procedures are followed. Therefore, the recommendations made in this article are presented within the legislative framework of the draft Model Child Protection Act being developed by the National Center on Child Abuse and Neglect.<sup>28</sup> Nevertheless, the suggested statutory provisions can be used appropriately in administrative regulations.

23. 45 C.F.R. § 1340.3-3(b) (1976).

24. Ireland (1966), *supra* note 16.

25. Fraser, *supra* note 10, at 516 n.41.

26. *See, e.g.*, N.Y. SOC. SERV. LAW § 422 (McKinney 1976 & Supp. 1977-78).

27. *See, e.g.*, VA. CODE § 63.1-248.8 (Cum. Supp. 1977).

28. NATIONAL CENTER ON CHILD ABUSE AND NEGLECT, MODEL CHILD PROTECTION ACT (August 1977 Draft) [hereinafter cited as Draft Model Act].



## II. THE FUNCTIONS OF AN UPGRADED CENTRAL REGISTER

A central register which is upgraded to become a comprehensive management information system and is coupled with a statewide hotline for reporting cases can:

1. *Facilitate management planning* by providing statistical data on the characteristics of reported cases and their handling;
2. *Assist assessments of danger to children* by providing or locating information on prior reports and prior treatment efforts;
3. *Encourage reporting of known and suspected child abuse and neglect* by providing a convenient hotline for reporting, by providing a focus for public and professional education campaigns, and by providing convenient consultation to caseworkers and potential reporters; and
4. *Sharpen child protective accountability* by monitoring follow-up reports.

The statutory language supporting such a system is found in the draft Model Act.

There shall be a central register of child protection cases maintained in the statewide center. Through the recording of initial, preliminary, progress, and final reports, the central register shall be operated in such a manner as to enable the center to: (1) immediately identify and locate prior reports or cases of known or suspected child abuse or maltreatment in order to assist in the diagnosis of suspicious circumstances and the evaluation of needs of the child and family; (2) determine the current status of all child protective cases in order to continuously monitor and evaluate the provision of child protective and treatment services in individual cases; and (3) regularly develop statistical and other information and analysis in order to measure the effectiveness of existing laws and programs and to facilitate research, planning and program development.<sup>29</sup>

However, many existing registers perform none or only some of the above functions because of financial limitations, the absence of support from agency decision-makers, civil liberties concerns, or because other information systems perform those functions. Taking these issues into account, the following sections of this article discuss these possible functions of an upgraded register.

29. *Id.* at § 21(c).

*A. Facilitating Management Planning by Providing Statistical Data*

There are many needs in child protective services, but the greatest need is the need to know. No activity, process, program, or administrative procedure in the child protective system operates so smoothly that it could not benefit from systematic evaluation and improvement. But agency managers and policy-makers largely lack meaningful information about the child protective system—the characteristics and needs of clients, the services they receive, and how well they are served. Such information is fundamental to intelligent planning and program development.

“Simply put, our major national social service systems are in the most primitive state with respect to their data gathering and data management capability.”<sup>30</sup> Virtually all efforts to plan and develop child protective services are hampered by a pervasive lack of adequate, objective, and quantifiable information. Presently, planning is based upon rules of thumb that have evolved out of experience and are justified through the use of anecdotal vignettes. Sometimes, these assumptions are based upon one-dimensional statistical tabulations which lack detailed data or control groups. (Even when quality data is available, protective service planners seem unable or unwilling to use it in decision-making.) As a result, planning for children and families cannot be conducted in a predictable or reasoned pattern. Agency planners cannot give the comprehensive direction that child protective services need. They cannot maximize the effectiveness of existing resources; they cannot assign thoughtful priorities in the development of additional resources; and they cannot point to a concrete record of accomplishment—or of need—in their periodic bouts with legislative and budgetary officials.<sup>31</sup>

Central registers have always been seen as a potential source for needed program information. Thus, as of 1974, over twenty-seven of the then thirty-three state laws creating a central register specifically

30. C. WEINBERGER, HEW RECORDS, COMPUTERS AND THE RIGHTS OF CITIZENS 88 [hereinafter cited as Weinberger].

31. Drs. Fanshel and Shinn describe what happened when the New York City Budget Bureau discovered that they were developing some of the only hard statistics in child welfare: “In the City of New York, there is only rudimentary and rather superficial analysis possible for illuminating cost factors in the delivery of foster care services to children and their families. That is to say there is no visible data gathering effort currently in operation which permits those with administrative responsibility to simply ‘plug in’ cost data as part of a broader array of information about children in foster care. This circumstance resulted in periodic visits to our project by representatives of New York City’s Bureau of the Budget who desired to secure more factual information about cost factors with respect to child care in New York City and saw the existence of our longitudinal study as affording an opportunity to pursue their interests in this regard.” *Id.* at 4-5.

mention research or planning as its purpose.<sup>32</sup> For example, the North Carolina statute provides: "The Department of Human Resources shall maintain a central registry of abuse and neglect cases . . . in order to compile data for appropriate study of the *extent* of abuse and neglect within the State . . . ." <sup>33</sup>

The desirability of having statistical data to gauge the effects of different services and treatment approaches cannot be overestimated. For example, a register which collects data on the outcomes of investigations provides hard and fast proof of failures to improve the lives of children and families. Subsequent reports on the same child or family (if valid) are concrete evidence of the failure of the child protective service to treat or ameliorate the abuse or neglect. In New York State, for example, twenty to thirty percent of all reports are repeat reports.<sup>34</sup> Because the register can record the system's failure, it can diagnose not only the child's condition but also the system's. Thus, the register becomes a prime tool in improving child protective services—the most beneficial purpose to which a register can be put.

However, the records in most existing registers are grievously incomplete because of fragmented and complicated reporting procedures. Many reports received by local agencies are never forwarded to the central register. Some states place a further obstacle to reporting by not providing printed forms for making reports to the register. In one state, ordinary local police arrest reports, sometimes called "injured child reports," which differ from community to community, are used to make reports to the central register. Another state reports:

Previous to the establishment of the Office of Child Abuse Control, our Central Registry consisted primarily of coded factual information available through computer printouts. The data was limited in scope and not available on a daily (or hourly) basis. Due to varied reporting procedures, this information was not always reliable or complete. Collation of all available information was not performed.<sup>35</sup>

32. Fraser, *supra* note 16, at 511 n. 16, 18, citing the following state laws as mentioning research or planning as a purpose of the register: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Kansas, Louisiana, Maryland, Michigan, Missouri, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Virginia, Washington, and Wyoming.

33. N.C. GEN. STAT. §§ 110-122 (1978) (emphasis added).

34. Fanshel & Shinn, DOLLARS AND SENSE IN FOSTER CARE 4 (Child Welfare League of America, 1974).

35. This report is documented in a November 2, 1973 letter from a New Jersey administrator, on file at the National Center on Child Abuse and Neglect, Department of Health, Education and Welfare, Washington, D.C.

The scope of most registers is narrowed further because only cases formally handled through the child abuse and neglect reporting law are recorded, thus excluding “non-mandated reports”<sup>36</sup> and reports made to other agencies. In one state, for example:

The Division of Child Welfare also investigates complaints of neglect or abuse coming from sources other than those named in the Child Abuse Act, and provides whatever services seem indicated. *Such cases, however, are not entered in the central registry unless a medical examination of the child is made and injuries reported.*<sup>37</sup>

The police are among “non-mandated” sources in many states. If the police in these states find a severely beaten child, the case might not be accepted by the state’s central register, unless the family comes in contact with a “mandated” source—even if the police have a confession or other clear evidence of parental responsibility. Even then, it is unlikely that a report would be made, for the “mandated” source would have every reason to assume that after police action a report already had been made to the central register. Unless the “mandated” source happened to make a report, the case might never be listed in the register even if a child protective investigation is made.

Furthermore, despite all the attention paid to mandatory reporting laws, and despite the constantly expanding coverage of these laws, the great bulk of reports, if abuse and neglect are considered together, continue to be made by individual, concerned citizens. Private citizens, not subject to the mandatory reporting law in many states, make more than one half of the nation’s reports;<sup>38</sup> and the children they report are just as endangered as the children professionals report. But often, their reports are excluded from a central register.

Making distinctions between mandated and non-mandated reports derives, in part, from the public agency’s desire to follow apparent legislative mandate and to avoid civil libertarian or inter-agency criticism by not overstepping its jurisdiction. Perhaps more important is a desire to assign priorities and to limit responsibilities in order to conserve scarce resources; if the register is maintained by one part-time

36. Reports are “non-mandated” when the person making them is not required (“mandated”) by the reporting law to do so or when the type of maltreatment involved is not required by the law to be reported.

37. Ireland (1966), *supra* note 16, at 115. Similarly, while in Rhode Island, “[a]nyone can report suspected abuse to the protective unit, [only] when abuse is validated (through a medical diagnosis), it is then recorded in the Central Registry.” Letter from A. Ricci, Assistant Director, Rhode Island Department of Social and Rehabilitative Services, Division of Community Services, to B. Fraser, National Center for the Prevention and Treatment of Child Abuse and Neglect (September 25, 1973).

38. AMERICAN HUMANE ASSOCIATION, NATIONAL ANALYSIS OF OFFICIAL CHILD NEGLECT AND ABUSE REPORTING 12 (1978).

clerk in the state office—as is often the case—an agency would not be anxious to see the register grow beyond a few hundred cases.

A vivid demonstration of the need to bridge the gaps between agencies by insuring that all reports of child maltreatment are recorded in a central register occurred when the New York State Assembly's Select Committee on Child Abuse sought to determine the number of children who died from suspected abuse or neglect in 1972. A list of child fatalities was requested from the state register and from each local child protective agency. For New York City, the state list contained fifty-seven children; the city protective service listed fifty-four children. Moreover, ten names on the city list were not on the state list, and fifteen names on the state list were not on the city list. The non-repetitive total of the names on both lists was sixty-seven. The Select Committee then asked the City Medical Examiner's Office for its list, which had only forty-four names, fifteen of which appeared on neither the city nor state lists. The New York City Police Department supplied eighty-seven names, twenty of which were not on the city or state lists. A review of newspaper clippings revealed an additional three verified fatalities on neither list. Thus, an essentially simple request for presumably the most concrete of abuse statistics—the count of reported dead bodies—disclosed that fifty-four percent were not in the state register, although they had been reported to some public authority. Child fatalities are less than three percent of the total number of child abuse reports. Their severity and small number should have made an accurate count by the New York Register easy.<sup>39</sup>

The experience of one program is representative of the glaring gaps in central register coverage that result:

We at University Hospital felt we needed a hospital based register, and so for three years we established a register of all cases we reported to the state register for suspected abuse and neglect. We were supposed to get dispositional reports back from our protective service agency but we identified approximately three-fourths of our cases in which we had received no dispositions back. I called the State central register on the cases that we had not received disposition back and found that these cases were, in fact, not in the central register. However, every year the central register was publishing incidence statistics of the number of cases reported in the state. And we found that the statistics that we'd been operating on for a number of years really were not valid statistics; we had no idea of incidence in our state; we had no idea of characteristics; we had no idea of demographics or anything else because the Central Register really

39. There was general agreement that this degree of inaccuracy in the most serious of cases was symptomatic of widespread gaps in the register's contents.

was not functioning in an useable way.<sup>40</sup>

Moreover, the case information in most register records is rudimentary, containing little more than the basic data mandated by the reporting law. Hence, the only statistics usually available merely describe the total number of cases reported, the ages of the children involved, the type of alleged abuse and neglect, the source of the report, and, sometimes, but not often, the alleged perpetrator. Such information offers little understanding about the children and families involved; missing are the vital and sensitive data that would explore and document patterns of abuse and neglect and variations in family status, treatment programs, and dispositional alternatives.

Consequently, the narrow, incomplete, and one dimensional statistical reports generated by most existing registers present a superficial and distorted picture of the problems facing child protective agencies. Little real program planning can be done with such elementary data, especially since electronic data processing and immediate retrieval capability are rare.<sup>41</sup> The description from one state is a valid generalization for many others: "Our Registry at this point in time is very limited and due to different agencies providing protective services, it does not represent the child abuse incidence on a total basis."<sup>42</sup>

For the good of the children and families involved, as well as for the agencies involved, we need to learn more about a whole range of prevention and treatment issues, such as the characteristics of reported cases, the effects of reporting laws and reporting procedures, the optimal deployment of emergency services, the way cases are handled, and the consequences of various intervention and treatment agencies. We need a practical information system that can develop data for long term planning and program development.

Nevertheless, though greatly needed, statistical information must be pursued and used with great caution. The idea of uni-dimensional cause and effect relationships in the real world of child abuse and child neglect can be misleadingly superficial. True relationships are complex and inextricably interwoven with many different, and sometimes hidden, factors. Even today, the most basic relationships are poorly understood. Moreover, it is often impossible to attempt to apply scientific

40. Unpublished proceedings of the 1974 annual meeting of the American Humane Association in Boston, Massachusetts. Material on file in the National Center on Child Abuse and Neglect (DHEW) [hereinafter cited as AHA Proceedings].

41. When a state reports that its register is computerized, this generally means that the data on manual records has been key punched for simple, numerical tallying.

42. Letter dated November 30, 1973, from a Nevada administrator, on file at the National Center on Child Abuse and Neglect, Department of Health, Education and Welfare, Washington, D.C.

measures of cost effectiveness to child protective procedures. Even financial costs include indirect as well as direct burdens that cannot always be discovered. Hence, although techniques of numerical analysis should be used, human values must also be weighed. Numerical measures tend to oversimplify and distort issues, since considerations such as justice, individual liberty, privacy rights, and humaneness cannot be quantified. The cost effectiveness approach cannot decide questions involving unmeasurable human values. It must be recognized as a limited focus on the critical issues that face planners, legislators, and administrators.

The danger is not only that too much information may be stored in central registers, but that too little thought may be given to the usefulness of what comes out. If unchecked, a passion for collecting statistics can be the undoing of registers. Modern information systems can generate great quantities of data without meeting management's information needs. The statistics, charts, and reports which a central register can churn out have the potential to overwhelm managers, for:

. . . in an information-rich world, the wealth of information means a dearth of something else: a scarcity of whatever it is that information consumes. What information consumes is rather obvious: it consumes the attention of its recipients. Hence a wealth of information creates a poverty of attention and a need to allocate that attention efficiently among the overabundance of information sources that might consume it.<sup>43</sup>

Printouts of incoherent data are of no use to planners, though they are good ammunition for those opposed to data banks. The following illustration should serve as a warning to overambitious data collectors:

Three years ago, an administrator in a large child care agency complained to a consultant that he had a data processing problem. His agency kept all statistical information for each child under care on a 5x8 file card. These cards were all kept in a large metal box. Keeping the data accurate required a great deal of manual effort, and preparing generalized or summary reports was a difficult and tedious chore. The population under care was constantly changing, and frequently the information required was not available from the cards. The administrator expressed great interest in an automated data base that would replace this manual system, thus giving him greater visibility into the information while at the same time easing the manual data processing chores.

After much effort and sizeable expenditure of money, an information system was developed which contained much more data than previously had been maintained. The computer prepared various types of reports for distribution to management at various levels.

43. Simon, *Designing Organizations for an Information-Rich World*, in *COMPUTERS, COMMUNICATION, AND THE PUBLIC INTEREST* 40-41 (M. Greenberger ed. 1971).

After a three-year effort, the agency had reached an advanced stage of automation. At this point the consultant visited the administrator again, and found his desk stacked with several feet of computer reports. The administrator remarked: "Wouldn't it be nice if I could get all the information about each child onto just one card. I can't possibly look at everything that comes out of the computer. Something has gone wrong here. The machine is out of control."<sup>44</sup>

Unless the proper thought and planning are given to the register's output, we may eventually come to share Dr. Faustus' lament: "Sweet Analytics, 'tis thou has ravished me!"

*B. Assisting Assessments of Danger to Children by Providing Information on Prior Reports and Prior Treatment Efforts*

Determining the existence of child abuse or neglect is almost always difficult; often it is impossible. Most child abuse and neglect occurs in the privacy of the home. Even the most thorough investigation may not reveal clear evidence of what happened. A medical report describing severe physical injuries that suggest child abuse may not establish a connection between the parents and the condition of the child. Most maltreated children are too young or too frightened to seek help on their own or are reluctant to criticize their parents. Unless a family member is willing and able to tell what happened, there are usually no witnesses to step forward.

Hence, the identification of child abuse or neglect usually means that a professional has formed an *opinion*, based upon certain signs or indicators, that the child is most likely abused or neglected.

Often, the most crucial factor in the diagnosis and evaluation of child abuse and neglect, especially for physicians, is circumstantial evidence showing a pattern of previous suspicious injuries. Since child abuse and neglect, are usually part of a repetitive or continuing pattern,<sup>45</sup> information concerning the existence of prior injuries or other manifestations of maltreatment can assist in determining whether an incident is an isolated occurrence or one of a series of injuries or reports suggesting abuse or neglect. Knowledge of a previous incident, similar in kind, can turn doubt into relative certainty. For example, a physician who examines a child with numerous bruises on his leg will

44. Allen & Young, *CHILD WELFARE AND THE COMPUTER: FOUR YEARS LATER* 18 (Edwin Gould Foundations for Children, New York, 1973).

45. See, e.g., D. Gil, *VIOLENCE AGAINST CHILDREN, PHYSICAL CHILD ABUSE IN THE UNITED STATES* 113 (1970) ("It has been mentioned earlier, when describing the children of the study and sample cohorts, that a large proportion of them were abused more than once, and that this seemed to reflect a child-rearing pattern that utilizes force toward children for disciplinary objectives").



be much less apt to accept the parents' explanation of the injury as accidental if he is aware of a series of previous suspicious or unexplained injuries.

Unfortunately, because the provisions of health and social services is fragmented in most communities and because abusing parents often take their children for treatment to different doctors or hospitals each time they are injured, a cumulative record on prior suspicious injuries and social service treatment efforts ordinarily is not available. By maintaining a community-wide or statewide record of prior reports and treatment efforts—and their outcomes—central registers are said to be able to provide assistance to professionals who need such information to determine whether a child is being abused or neglected. One hospital social worker reports:

There are two hospitals in our area that have tried to establish files on suspicious injuries treated in the emergency room. The medical social worker, attached to the emergency room, takes the names of the children who come in for a traumatic injury of any type and puts it in a file box. (These are mostly incidents which are not of severe enough suspicion to record in the register.) The information from one hospital will be shared with the other hospital. As a result, we have identified 75 cases by pattern instead of by specific instances. We feel that we have an excellent vehicle for establishing some type of preventive tool, of getting involved.<sup>46</sup>

Since most central registers are statewide in scope,<sup>47</sup> they could be an important tool for locating the records of families that have moved from county to county. While school, welfare, employment, and driving records are often helpful in tracing a family, sometimes they are unavailable or incomplete. In some cases, the existence of a statewide index is the only thing that could enable the physician or protective worker to discover past history. And in almost all cases, it could be faster. Ireland describes how the register can aid in case assessment and in determining services needs:

Department staff members in the regional or district offices may contact the central registry at any time to learn whether or not a child has ever been reported for abuse. Since the Central Index on Child Welfare Services and the Central Registry on child abuse are closely correlated, the same inquiry may elicit information on whether or not the child or family is being or has ever been served by the department or any of the voluntary child welfare agencies licensed by and reporting to it. This optional procedure may be interpreted as a diagnostic aid or simply as a means of reducing duplicate efforts. It is diagnostic in the sense that a child or family that has been reported

46. AHA Proceedings, *supra* note 40.

47. See text accompanying notes 91-95, *infra*.

previously on suspicion of abuse can be identified and the worker directed to the source of more detailed information. Even if no previous report of abuse had been made on the family, a cross check with the index on child welfare services will reveal whether the family has previously been served by a child welfare agency and so may make it possible to get further background information to assist in diagnosis or service.<sup>48</sup>

To those familiar with social and child welfare services, the use of the register to discover information on prior contacts with agencies may sound like the Social Services Exchanges existing in some communities. To a great extent, that is precisely one of the roles envisioned for the register.

Reflecting one of the original purposes of central registers, the rhetoric of diagnosis still permeates public discussion of the register's purpose. As of 1974, twenty-seven of the then thirty-three state laws creating central registers made specific reference to the diagnostic function of the register.<sup>49</sup> Legislative language includes: The state department "shall maintain a central registry of abuse and neglect cases . . . to identify repeated abuses of the same child or of other children in the same family,"<sup>50</sup> or "for determining the existence of prior reports in order to evaluate the condition or circumstances of the child,"<sup>51</sup> or "to determine whether prior reports have been made in other counties concerning the child or other principals in the case,"<sup>52</sup> or "on a twenty-four hour daily basis to prevent or discover abuse of children."<sup>53</sup> In addition, some states make administrative provision for using the register to assist in diagnosis.<sup>54</sup>

Nevertheless, no state can point to more than a handful of instances in which a professional requested the register's assistance to diagnose suspicious circumstances; most states cannot point to any instances.<sup>55</sup> And it is a good thing that professionals do not request

48. Ireland (1975), *supra* note 16, at 114-15.

49. Fraser, *supra* note 10, at 519-20 citing the following states: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Kansas, Louisiana, Maryland, Michigan, Missouri, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Virginia, Washington, and Wyoming.

50. N.C. GEN. STAT. §§ 110-122 (1978).

51. N.Y. SOC. SERV. LAW § 422(2) (McKinney 1976 & Supp. 1977-78).

52. OHIO REV. CODE § 2151-421 (Page Supp. 1977).

53. CONN. GEN. STAT. ANN. § 17-38a (Supp. 1977).

54. WIS. DEP'T OF HEALTH & SOC. SERV., DIV. OF FAM. SERV., COUNTY MANUAL, Section A, Administration, § 1661.40 (1)C(1)(A). [Hereinafter cited as WIS. MANUAL].

55. Consider, for example, the comments of a Michigan administrator in an August 30, 1973 letter, on file at the National Center on Child Abuse and Neglect, Department of Health, Education and Welfare, Washington, D.C.:

The Central Register is also used to identify cases of previous suspected abuse involving the same child or suspected abuse occurring within the same family but inflicted upon a sibling. Thus, all records are checked to see if a previous report has been made. If

diagnostic assistance, for the central registers in almost all states could not provide the needed information:

- (1) *easily*, because a hand search of manual files is necessary;
- (2) *quickly*, because insufficient staff is assigned to the register;
- (3) *usefully*, because the records are woefully incomplete, inaccurate, unverified, outdated, and lack follow-up information on the previous report, and because register workers are generally unqualified or too busy to provide diagnostic consultation;
- (4) *politely*, because some harried register workers are curt and short tempered; or
- (5) *when needed*, because most registers provide information by mail only or are closed after regular business hours.

Although a growing number of states provide for telephonic access to the register,<sup>56</sup> many states still require that reports and requests for information from the register be sent by *mail*. When a check of the files indicates a prior record, some states notify the inquiry by telephone,<sup>57</sup> but others *answer by mail*.<sup>58</sup> Professionals in the community who are called upon to make immediate decisions about the safety and welfare of a child obviously cannot wait the three days to three months that it takes to get a mail response. The following case illustrates how the delays inherent in a mail notification system can seriously compromise efforts to protect a child:

A case of child abuse brought before a Family Court as a result of a report to the county's Department of Social Services was dis-

there has been a previous report relating to the same child or family, the State Office immediately contacts the local county Department of Social Services to alert them to the situation. This has proved useful, especially in large counties where earlier reports may not be immediately available and in those situations where the family has moved from one county to another. This information is noted as shared with the local county Department of Social Services but is not forwarded to any outside agency except those agencies that may request information as stated in the law—the Probate Court or the Prosecuting Attorney. . . . [I]t has been our experience, however, that very few requests are made by either Probate Courts or Prosecuting Attorneys for this information.

56. *E.G.*, in Maryland, "Information regarding the record of previous reports is available by inquiry to professional personnel and agencies required by law to report." Letter dated August 28, 1973, on file at the National Center on Child Abuse and Neglect, Department of Health, Education & Welfare, Washington, D.C. See also WIS. MANUAL, *supra* note 54, at § 1661.40(1)C(1)(A): Protective workers only are given telephonic access "if rapid Central Registry response is necessary."

57. See, e.g., MO. ST. DEP'T OF PUB. HEALTH & WELFARE, DIV. OF WELFARE, WELFARE MANUAL, § IV, p.5a.

58. See, e.g., MINN. DEP'T OF PUB. WELFARE, INFORMATIONAL BULLETIN, FROM V. LUKINS, COMM'R, Sept. 29, 1972.

missed for lack of sufficient evidence. More than two months before, the Department had requested information from the State's Central Register concerning prior reports on the child or the family. Three weeks after the court case was dismissed, the Department received the Register's response: a report of abuse had been made about the child ten months earlier. Because the report had been made in another county, because the register's operation was slow, and because mail notification was used, the information took more than three months to reach the county where it was needed. By that time, the Department had been forced to close the case and was unable to locate the family again.

Another state established its central register in the wake of the death of a child whose condition had been known by child protective agencies in three different counties as the family moved from place to place. Each county had received and investigated a separate report of suspected abuse and neglect from the community. But twice the family moved to another county, and each time the local agency was not notified of the prior report. For a few months, the papers were full of stories about the bureaucratic fumbling and inadequacies that had cost the child's life. So, an elaborate, computerized central register system was established to prevent recurrences of such breakdowns. The register had an automatic, monthly feed-back system to individual protective workers. On paper, the register appeared to be a well-designed, sophisticated system. However, five years later, when the staffs of three different county child protective units were asked how they used this central register, they responded: "What's a central register?"

"Well, you know, the statewide index of reported child abuse and neglect."

"What?"

Then a hint: "It comes in a big, thick IBM printout book."

"Oh! That. Yeah, it's back there somewhere." So it was dug out, dusted off, and examined. Sure enough, it was labeled: "Central Register on Child Abuse and Neglect." But it was not used.

We should not be too critical of the protective service staffs in this state; it is just as well that they do not use their register. For, when the computer had been programmed five years before, it was programmed in such a way that every subsequent report of abuse automatically *erased* the previous report of child abuse. For five years, there could be *no* matching, *no* repeated reports recorded in the entire state. No one noticed for five years—that the register could not perform the very function for which it was created!

Since information on prior suspicious occurrences and treatment efforts can assist any person who must decide whether a child is abused

or neglected, one might assume that all "mandated" reporters should have access to the register for diagnostic and evaluative assistance. However, although a few states allow all mandated reporters to have direct access to the register,<sup>59</sup> the great majority severely limit access to the register.

The reason for limiting access is a twofold concern over the misuse of the information in the register. First, authorizing access to all mandated reporters creates immense practical problems in guarding against unauthorized disclosure of information. For example, there are over 27,000 school teachers in Chicago; there are thousands of social workers in San Francisco. It would be impractical to issue to every possible mandated professional an identifying code number, much like a credit card number, which would have to be recited together with a password in order to gain information.<sup>60</sup> Fraser suggests a simpler but less secure system:

Probably the most efficient method would be to take the name, address, and occupation of the person making the request and to return the call when the relevant information is obtained. An operator can cross-reference the name and address of the caller with the appropriate telephone directory. If the name can be verified and the person has an occupation or position authorized by law to receive the information the operator simply places a return call to that person to provide the requested data.<sup>61</sup>

In any event, such enormous access to the names and personal and family data in the register unreasonably compromises the right to privacy of those children and families involved.

Secondly, there is a real danger that potential reporters might allow the presence or absence of a prior record to influence their actions inordinately. The presence or absence of such information may be used as a crutch by those who do not take the time or trouble to evaluate a family situation carefully. As a consequence, many children may not be reported who should be and many children will be reported who should not be.

Evidence of prior reports, theoretically, has a legitimate place in a professional's considerations; it is expected to help shape decisions because it may reveal a pattern of injuries or occurrences suggestive of abuse or neglect. Unfortunately, the existence of a prior report can so

59. *E.g.*, MD. ANN. CODE art. 27, § 35A(i) (1976); MASS. GEN. LAWS ANN. ch. 119, § 51(E) (West Supp. 1978-79).

60. Tennessee requires this procedure for protective workers who wish to gain access to its computerized central register; but in Tennessee protective workers are the only persons granted access.

61. Fraser, *supra* note 10, at 514 n.34.

condemn a family in the eyes of professionals that they overreact.<sup>62</sup> Out of concern, fear, or laziness, they may assume the worst about the parents and report them just because they have been previously reported. *But what if* the previous report was unfounded, malicious, or otherwise unwarranted, and yet the professional, without knowing this, relies on the previous report to make a decision? Clearly, if there now is an abuse or neglect problem, a report should be made; but if there is no such problem, then a grave injustice has been done to the children and family involved because they will be forced to go through another child protective investigation. Furthermore, though the prior report may have been valid when it was made, perhaps years before, the family might have overcome its problem since then. Much progress could be lost as old problems are raked up by a new, and unfamiliar, protective worker.

Dr. Eli Newberger of the Boston Children's Hospital points out the danger of stigmatization caused by prior reports:

I work in a large, urban children's hospital which has an active emergency room. The interns and residents who staff it are usually very busy, and they have to make major diagnostic judgments and management decisions quickly.

Until recently, there existed in Boston an informal clearing system for children at risk called the Vulnerable Child List. Copies of the names and addresses of children who were deemed in jeopardy by doctors, nurses, or social workers but whose cases were not reported as child abuse and neglect under existing law were circulated each month to each hospital emergency room. The diagnosis and principal source of medical care and of social services was also transmitted.

I know of two occasions where physicians took precipitous action to admit children for protective reasons after consulting the list. In each case, an inadequate interview was performed; in neither was the social worker on call consulted. One of the families happens to be well known to me. The child was clearly in no danger after suffering a minor fall. Her mother spoke of the encounter with the emergency room staff as a terrible ordeal. She remains afraid to come back to the hospital for care from any physician but me.

Ultimately, with the help of the Junior League of Boston, we undertook a study of the names and data in the Vulnerable Child List. The results were shocking. Entries were often inaccurate. Information of highly dubious and possibly slanderous substance was circulated. There was no expungement. The burgeoning file served no apparent clinical use, and it was dismantled. We took the experience with this list to the conference table when writing administrative guidelines for the new Massachusetts child abuse reporting law, in

62. Sussman, *Reporting Child Abuse: A Review of the Literature*, 8 FAM. L.Q. 245 n.302 (1974).

order as tightly as possible to control the misuse of the case registry. We now try to protect families both from stigma and the operational consequences of an inappropriate diagnosis of risk, even as we make hard clinical decisions based on soft data.<sup>63</sup>

Conversely, the absence of prior reports may serve as an excuse not to report a case that should be reported, or it may lead a professional to conclude that his suspicions are unfounded or that his evaluation of risk to the child is overly severe. Such assumptions are dangerously unwarranted, given the present state of existing central register systems. Many prior reports, especially if not "mandated" by law, may never have been recorded in the register. Even states which have expanded reporting laws and registers that include non-mandated reports experience a time-lag phenomenon. When most cases in the register are of very recent origin, the percentage of matches with previous reports ("hits") must be very low, if computed on the basis of all reports in the register. Yet, the percentage of "hits" increases geometrically among reports made more recently (when reporting rates increased dramatically). Thus, absence of a prior recorded report may have no meaning because of the likelihood that previous suspicions were not reported to, or recorded in, or recoverable from, the register.

Another danger in relying exclusively on the absence of prior reports is that the present report may not have been successfully cross-referenced and matched with a previous one. As a protective worker laments:

I swear to you, I had a father with one daughter who moved so fast that there were three open protective services cases on him in three different counties in one month; that's how mobile he was. In some of our more serious cases, and I mean a child may be dying, the parents have the smarts to change their names. And the registry has not helped us to match those up, unless at a local level. In another case, after we placed a child, we found out that we had three different cases on her in three different home situations. It was not until we asked for her birth certificate and started just talking around in our little county office that we found out that they had been known to us before. And our county only has 70,000 people and four workers.<sup>64</sup>

Viewed realistically, the mere fact that a previous report is or is not found in the central register must be only one factor in a professional's decision of what to do in a specific situation. With some justification, many fear it could become the only factor.

Overemphasizing only one factor in diagnostic evaluation—the existence or non-existence of prior reports—is misleading and harmful

63. AHA Proceedings, *supra* note 40.

64. *Id.*

to children and parents. It may lead to the reporting of families that should not be reported, when the reporter, without knowing the current situation or the outcome of the previous report, assumes that a child is being abused or neglected just because there is a previous report. Or, it may lead to not reporting families that should be reported, when a potential reporter assumes that a child is not being abused or neglected just because there is no previous report. In both situations, the old adage is true: "A little knowledge is a dangerous thing."

For these reasons, many states have concluded that potential reporters should not know about previous reports, especially since the law now requires them to report only their reasonable suspicions. Recognizing the difficulty in making a definitive diagnosis without a complete investigation and evaluation, reporting laws no longer require an individual making the report to be sure the child is abused or neglected.<sup>65</sup> Almost without exception, they require only that the individual *reasonably suspect* that the child is abused or neglected. Therefore, now it is not necessary for the person seeking to protect a child to first reach a definitive diagnosis, medical or otherwise, before making a report.<sup>66</sup> If a potential reporter is to be given access to the register when he has a reasonable suspicion that a child is abused or neglected—and if he already suspects this—why does he need access to the register for diagnostic assistance in deciding whether to make a report of "suspected" child abuse.

As to diagnosis, again time has wrought changes in knowledge and thinking. In Maryland, as in many other states, any suspicion of abuse must be reported. Neither the physician nor the teacher, nor any other reporter, must "confirm" abuse before making a report. That is up to those mandated to investigate the reports of suspicion. Reports to a registry of previous suspicions thus are of dubious value in confirming or ruling out findings in a current report. Therefore, a central registry, computerized or not, does not and should not function as a diagnostic tool.<sup>67</sup>

65. Most states have moved away from the original 1963 Children's Bureau Model Reporting Law recommendation that reports be made to police for investigation; they now rely on the less punitive, less threatening, and less stigmatizing "social investigations" of the child protective service.

66. DeFrancis & Lucht, *supra* note 11, at 8:

The effect of this language is that the reporter's diagnosis need not be absolute. He does not have to prove conclusively, even to himself, that the child is a victim of inflicted injury. If the circumstances are such as to cause him to feel doubt about the history given; if he has cause to doubt the truthfulness of the person who tells him about the alleged accidental cause of the injury; or if X-ray or other examinations reveal symptoms and facts inconsistent with the circumstances described, then he has sufficient "reasonable cause to suspect" that the injuries may have been inflicted rather than accidental. This would be enough to satisfy the requirements of the law.

67. AHA Proceedings, *supra* note 40.



### 1. Access by Child Protective Personnel, Police, and Physicians

After a report is made, protective workers, physicians, and law enforcement officials must assess the immediate danger to the child and the treatment needs of the family. Decisions to remove a child from his parents are excruciatingly difficult. (Compared to such decisions, deciding whether to report is much simpler because, if he is unsure, the individual usually is mandated or permitted by law to report "suspected" child abuse or neglect.) Knowledge of previous reports and their outcome can help to evaluate the seriousness of the family's situation and can be an important factor in determining whether the child is in such danger that he should be removed immediately from his home. For instance, a physician seeing a bruised or emaciated child in a hospital emergency room must not only decide whether there is sufficient cause to report but also must decide whether the child should be placed in protective custody. One aspect of the doctor's dilemma is the need to evaluate the risk that may be incurred if a child is taken home before a protective worker can visit the family. An equally serious problem, particularly for urban hospitals, is posed by the knowledge that, once the child has been returned to the parent's custody, the child and family might disappear into the anonymity of the city. In both situations, it can be crucial for the physician to know about prior treatment efforts and the prior history of the family.

Knowledge of prior history also can help to ensure justice and fairness to the parents. Without accurate information on prior reports and their outcomes, decision-makers are faced with a cruel dilemma. They know that a prior report was made; but they also know that many reports are unfounded.<sup>68</sup> Thus, they have no idea whether the previous report about the child is valid or not—unless they are told. Out of ignorance, too many child protective decisions are based on blind fear. Doctors and protective workers often say to themselves: "If I don't remove this child to safe custody, he might be killed or disappear. And I might be blamed!" They need access to some person or facility that can say:

- (1) This appears to be a dangerous situation—because the family situation had deteriorated since a previous report, or because the family disappeared after a

68. Depending on the reporting source, from ten to sixty per cent are unfounded. *See, e.g.,* American Humane Association, NATIONAL ANALYSIS OF OFFICIAL CHILD NEGLECT AND ABUSE REPORTING 11 (1978). *See also* N.Y. ST. DEP'T OF SOC. SERVICES 1974 ANNUAL REPORT FOR THE PROVISION OF CHILD PROTECTIVE SERVICES (1975).

previous report, or because the local protective service misdiagnosed or lost track of the case, or

- (2) This does not appear to be a dangerous situation—because the family is satisfactorily under care, or because the previous reports were made by the same person, perhaps a disgruntled spouse or vindictive neighbor, and proved to be unfounded.

An example of the difficulties this lack of knowledge causes occurred in a large city's emergency child welfare service:

At 9 p.m. on Friday night, a case of suspected child abuse was reported. The caller identified herself as the aunt of three children, aged one to five years, who were home alone while their mother (her sister-in-law) was out on the town. A check of previous reports showed that two weeks before a similar report had been made by the same aunt. However, because the agency did not include the outcome of reports in its central information system, the emergency worker would have had to wait until the next Monday morning to learn, from the caseworker's file, what happened. Obviously, such a delay was unthinkable.

The worker had no choice but to request the police to investigate the situation. The police went to the apartment, located in a rough neighborhood of the city, and knocked on the door. Hearing footsteps but receiving no response to their calls, they broke down the door. Cowering in a corner were three children together with a fourteen year old babysitter frightened out of her wits.

It was not until the next Monday that the vindictive nature of the original report was revealed by the agency's case record.

Although sharing of information between professionals is often a suitable alternative to direct access to a central register, it is impractical when a police officer or physician needs the information quickly or in the middle of the night. Therefore, many states have concluded that professionals who must exercise emergency child protective responsibility—as opposed to all mandated reporters—also should have quick access to information about a family's social history, which is essential to intelligent child protective decision-making. Besides child protective workers, carefully designated professionals who have responsibility for making emergency decisions about protective custody often are given direct access to information at the time they need it most—when they may be making a life or death decision. Depending on the state, these professionals include law enforcement officials,<sup>69</sup> physicians,<sup>70</sup> and

69. *E.g.*, IOWA CODE ANN. § 235A.15(2)(c) (West Supp. 1977-78); NEV. REV. STAT. § 200.5045 (3)(d) (1977); OR. REV. STAT. § 418.770(1) (1977).

70. At least 20 states authorize access to physicians. *E.g.*, GA. CODE § 99-4302(b)(1) (1976); MD. ANN. CODE art. 27, § 35A(i) (1976); OR. REV. STAT. § 418.770(1) (1977).

other persons authorized to place a child in protective custody,<sup>71</sup> such as the heads of hospitals and similar institutions, to which a number of states have granted a protective custody power called "twenty-four hour hold."<sup>72</sup>

Not to provide such information is like saying to a physician: "Do not read the social history in the hospital record." A hospital record can have the same kinds of information that a central register report contains, except that a hospital record presumably has been filled out by a physician or member of the professional staff, whereas a central register record may be the result of a call from a neighbor. Should not doctors consult the hospital record for previous injury before making a diagnosis of child abuse? If so, why should they not use a central register, which is just another set of records similar in substance and content to the hospital records? But like hospital records, register records must be read and interpreted with expertise and caution.

Central register information which is available to child protective workers, police officers, physicians, and other professionals authorized to place a child in protective custody must be used intelligently. Much of the danger of possible misuse of information would be dispelled if those authorized to use the register, including protective workers, were trained in its use. Keeping the register up-to-date with follow-up reports and promptly removing unfounded reports also would do much to reduce the danger of misuse.

## 2. Access By Treatment Agencies

Prior history is also needed to help determine a treatment plan. The Colorado Division of Public Welfare's *Staff Manual* describes this use of the register:

[The] Register will be used by the county departments to determine if previous acts have occurred in the same household or family. The securing of information relating to these previous acts will assist the county department in providing proper services, evaluation of whether the child's interests are being properly served, and in the preparation of plans with the family for provision of continuing services.<sup>73</sup>

71. See, e.g., COLO. REV. STAT. § 19-10-115(2)(c) (Cum. Supp. 1976); MICH. COMP. LAWS ANN. § 722.627(1)(d) (Supp. 1977); N.Y. SOC. SERV. LAW § 422(4)(b) (McKinney 1976 & Supp. 1977-78).

72. See, e.g., MICH. COMP. LAWS ANN. § 722-626 (Supp. 1977); 11 PA. CONS. STAT. ANN. § 2208(a)(2) (Purdon Supp. 1977).

73. COLO. DIV. OF PUB. WELFARE, STAFF MANUAL, VOLUME VII, PUB. WELFARE SERVICES, Part I, Services Policy Section A-7422.55.

Treatment agencies, such as family service, mental health, and foster care agencies, also need a clear picture of family history in order to develop and implement successful treatment strategies. For this reason, many states specifically grant these agencies access to the information in these records.<sup>74</sup>

### 3. Access by Courts and Grand Juries

Courts and grand juries often need child protective records in their deliberations. Extra protection should be provided by a requirement that the court first inspect the records *in camera*. If the court determines that the record is a necessary element of evidence, then it can be introduced into evidence. Grand jury proceedings are confidential in all states, of course, so no further protection of child abuse records should be necessary.

### 4. Access by All Other Reporting Professionals

Direct access to the register for all other reporting professionals coming in contact with abused and neglected children is not necessary. Protective workers can share information with other appropriate agencies and professionals as a cooperative treatment plan is developed. Professionals who know and trust each other should be able to discuss a case in their professional capacities. In Illinois, for example:

Persons outside the department, including physicians or law enforcement agencies, do not have direct access to the central registry. Since the same principle of confidentiality of information applies to it as persons who have reported, or are contemplating reporting, a caseworker can receive helpful diagnostic information and assistance through consultation with the child welfare worker in the region or district to which the report was made. This direct consultation improves interprofessional relationships. In addition, it saves the inquirer a long distance telephone call to the state capital since the nearest office of the department will probably be in his own community, or, at the farthest, thirty-five miles away.<sup>75</sup>

To successfully share information in this way, professionals involved must develop a cooperative relationship which enables them to discuss cases as one professional to another without concern that the information shared might be misused. But sometimes the process is neither smooth nor easy. A line worker reports:

No one other than a protective services person can get that information. The doctor must call a protective service worker if he

74. *E.g.*, FLA. STAT. ANN. § 827-07(7) (West 1976); MICH. COMP. LAWS ANN. § 222.627(1)(e) (Supp. 1977); NEV. REV. STAT. § 200.5045(3)(c) (1977).

75. Ireland (1966), *supra* note 16, at 115. *See also* WIS. MANUAL, *supra* note 54, at § 161.10.

wants the information. Certainly we do cooperate with the doctor and law enforcement, but only if they have specific knowledge of the case first. We do not give out information on cases just because they would like to know something about a particular child. Legislators, attorneys, doctors can't get into our registry. We have some hard feelings with our Welfare and Family Service's Agency because I can see their records but you let a service worker try and get hold of mine, and they really have a fight on their hands. In the middle of the night when a doctor has a question about whether or not he should release the child he calls our registry and gets a worker. It is not my favorite job to go out investigating in the middle of the night, but that is how we run our registry and so it is part of our job.<sup>76</sup>

### *C. Encouraging Reporting of Known and Suspected Child Abuse and Neglect*

#### 1. By Providing a Convenient Hotline For Reporting

A confused and confusing reporting process often discourages professionals and private citizens from reporting. Ignorance of the local agency's telephone number and the frequent absence of a specialized phone line at the agency can be major obstacles to more complete reporting. Consequently, in the early 1970's, a number of states established centralized, statewide reporting hotlines, at least ten through legislation.<sup>77</sup> If a reporting hotline is established in association with the central register as the twenty-four hour recipient of all reports,<sup>78</sup> the resultant uniform and easy to use procedure of calling a statewide hotline encourages more complete reporting.

#### 2. By Providing a Focus for Public and Professional Education

The sensational death of a young child is too great a price to pay for increased reporting. A more humane way to encourage better recognition and reporting is to sensitize and educate the general public and professional personnel.<sup>79</sup> However, most local and state authorities have been unable to mount sustained educational and training programs. Medical and child caring professionals—including physicians, nurses, social workers, teachers and day care personnel—and the general public must be made aware of the prevalence of child maltreatment and must know how to identify and report such maltreatment. An educational program that meets these objectives, while emphasizing

76. AHA *Proceedings*, *supra* note 40.

77. *See, e.g.*, N.Y. SOC. SERV. LAW § 422(2) (McKinney 1976 & Supp. 1977-78).

78. *See* text accompanying notes 96-99, *infra*.

79. *See* McCoid, *The Battered Child and Other Assaults Upon the Family: Part 1*, 50 MINN. L. REV. 1, 37 (1965).

that child protective procedures are not punitive but rather are designed to protect the child and rehabilitate the family, can result in vastly increased reporting. "The Central Register [sic] assists in alerting the public to the nature and extent of the problem of child abuse in the state," by facilitating the collection, analysis, and distribution of statistics and other information about the incidence and severity of child abuse and neglect.<sup>80</sup>

The hotline/register itself becomes a convenient and dramatic focus for public and professional education. Training programs can avoid a complicated explanation of where to report what kind of abuse or neglect during different hours in different communities in a state. Instead, a simpler, more easily remembered message can be given: "If you suspect that a child is abused or neglected, call the state child protection center!"

### 3. By Providing Immediate Consultation to Child Protective Personnel, Potential Reporters, and Parents Seeking Assistance

If a hotline is established together with a central register and if the persons assigned to the hotline are trained in protective services—and preferably have field experience as well—then the register can provide helpful consultation to those seeking to protect children. Professionals, including child protective workers, and private citizens may not understand a case before them or know how to handle it. Often, they need someone to call who can help them to understand the situation, their legal rights and responsibilities, and the appropriate steps to take; they need someone with whom to consult, to plan, and to begin the cooperative dialogue that determines the handling of a case. Hotline staff can refer inappropriate reports and self reports (from parents seeking help), can advise potential reports about the law and child protective procedures, can assist in diagnosis and evaluation, and can consult about the necessity of photographs, X-rays, and protective custody. Diagnostic accuracy and the handling of later stages of cases would improve almost immediately. Thus, whether a state or local system is used, staff answering the telephone should have social work or comparable qualifications, enabling them to offer effective and sensitive assistance to parents and others calling for help.

The relevant section of the draft Model Act reads:

80. Ireland (1975), *supra* note 16, at 115.

There shall be a single statewide, toll-free telephone number within the statewide child protection center which all persons, whether or not mandated by law, may use to report known or suspected child abuse or neglect at any hour of the day or night, on any day of the week. Immediately upon receipt of such reports, the center shall transmit the contents of the report, either orally or electronically, to the appropriate local child protective agency. Any person or family seeking assistance in meeting child care responsibilities may use the statewide telephone number to obtain assistance or information in accordance with section 3 of this Act. Any other person may use the statewide number to obtain assistance or information concerning the handling of child protection cases.<sup>81</sup>

*D. Sharpening Child Protective Accountability by Monitoring Follow-up Reports*

Once a report is accepted by a child protective agency, it is assigned to one of the agency's protective workers, who is responsible for the field investigation and for the provision of protective and treatment services. Individual workers have the greatest influence on investigations and the ultimate handling of cases. Many of their decisions can mean life or death for the children under their care. Theoretically, they are supervised by an administrative bureaucracy and are accountable to it, but they have enormous discretion in their determinations, and their decisions usually become the agency's.

Based upon the "investigation," the protective worker decides if the report of suspected abuse or neglect seems true and, if so, what further action is required. If the worker decides that the child's or family's situation requires services, the decision must be made whether to work with the family members, refer them to another social agency, or initiate court action. In some cases, the worker may decide that the child is in such imminent danger that treatment services will not suffice and that the child's removal from the home is necessary. Even in such situations, the worker seeks to avoid court action by persuading the parents to agree to place their child in foster care.

The protective worker's decisions divide into two interrelated and simultaneously explored issues:

- (1) *Verification of the report.* Do the allegations seem to be true? Has the child been abused or neglected? Who is responsible?
- (2) *Determination of the needs of the child and family.* Is the child and family in need of protective services? Is there a need for immediate action? Should the child be

81. Draft Model Act, *supra* note 28, at § 21(b).

placed in protective custody? What kinds of ameliorative or treatment services are necessary? Are they available? Must the child be removed from his home permanently or for a long period of time? Is court action necessary?

The need to make these difficult child protective decisions—to investigate and verify third-person reports and to offer or impose treatment services—sets child protective casework apart from most other types of social casework and in many ways makes it more difficult, more trying, but also less rewarding.

Viewed realistically, child protective intervention is, in part, a law enforcement investigative and decisional process—a process in which the protective worker must intrude into the family, often against the parent's will, in order to gain sufficient information about the family to decide whether a child is in jeopardy and whether ameliorative or rehabilitative services are needed. However, simultaneously, the protective worker is expected to begin treating the parents, either directly or by preparing them for referral to a treatment program or facility.

Because there is often no clear evidence establishing abuse or neglect, protective workers frequently must form an opinion about whether or not the report *appears* to be valid, based upon circumstantial evidence, including such signs or indicators as (1) the child's or sibling's physical condition, (2) the child's or sibling's behavior or demeanor, (3) the statements of family members, (4) the parent's behavior or demeanor, (5) the condition of the home, (6) the family's home situation, (7) the prior history of the family, including previous suspicious injuries to the child or siblings, and (8) the psycho-social forces operating within the family. This judgment must be tentative and can be fraught with uncertainty.

The combination of skills which child protective workers need to be effective is staggering. They must be both policemen and social workers, investigators and friends.<sup>82</sup> Unfortunately, many child protective workers do not reach this ideal. Many are unhappy with the grave responsibility placed upon them to protect children from further harm through an often involuntary investigation, evaluation, and intervention. As social workers, many entered their profession with the intention of helping people by working with them to solve problems, but as protective workers, they find themselves in the contradictory position of investigating a family while at the same time trying to establish

82. *Id.* See also §§ 3, 13.



a treatment relationship. Child protective services suffer because workers often cannot resolve these basic role ambivalences. Most are not professional social workers. Those few with Master of Social Work degrees quickly qualify for promotion to supervisory positions or find employment outside the agency.

In many places, the public welfare department responsible for child protective services does not even have a section specializing in child protective work.

Many protective workers have little training in child protection methods beyond a hasty orientation session; they are largely unfamiliar with the skills of social casework, including psycho-social evaluation, counseling, therapy, and referral—the necessary underpinnings of their work. With little to guide them, they must learn by trial and error in situations where a mistake can mean a child's life. Many of those who stay eventually become sensitive, competent workers, but many also become set in bad practices and inadequate understanding.

The very rapid turnover in protective service staff compounds the problem. In some agencies, the rate exceeds fifty per cent a year. Supervisors point to poor morale as the major cause of rapid turnover. Workers facing emotionally demanding work, with little training and inadequate backup and supportive supervision, leave when they can no longer bear a job which offers little emotional satisfaction.

Research sponsored by the New York City Mayor's Task Force on Child Abuse and Neglect found that, of the protective workers surveyed, "less than twenty percent felt a child protective worker's role was to protect the child."

When asked what do you see as the role of the investigator in abuse and neglect cases, the vast majority (85%) made reference to developing a casework relationship with the client. One of every three respondents mentioned diagnostic study while less than twenty percent felt that a child protective worker's role was to protect the child. Most respondents (67%) felt that their colleagues had the same role definitions as they did.<sup>83</sup>

Consequently, protective workers often have difficulty making the excruciating decisions required in child protective work. In one survey, over one-third of the protective workers interviewed admitted that they had difficulty in verifying the accuracy of abuse or maltreatment reports.<sup>84</sup> Workers also have difficulty deciding whether the situation requires the removal of the child or permits the closing of the case.

83. NEW YORK CITY TASK FORCE ON CHILD ABUSE AND NEGLECT, FINAL REPORT 95 (1971) [hereinafter cited as N.Y. CITY TASK FORCE REPORT].

84. *Id.* at 98.

Because in most states there is no review of the worker's decision, and hence "little assurance . . . that any follow-up will be made,"<sup>85</sup> workers often try to avoid making any decision at all: (1) by convincing the parents, through persuasion or threats, to "voluntarily" accept services, including foster care, without determining the real need for them; (2) by shifting the onus of decision through a referral of the case to the juvenile court for a judicial decision; or (3) by keeping the case open "for services" or "for counseling" indefinitely, not because he is treating or helping the family, but because he cannot bring himself to a decision. Too often, child protective cases never close, they only fade away—as caseworkers change, memories dim, or the family moves away. Dr. C. Henry Kempe comments that social casework is:

often undertaken at the risk of further damage to a defenseless child in the mistaken belief that 'there is no such thing as a person we cannot help.' Indeed, there are clearly situations where a caseworker has to face the fact that reliance principally on casework therapy alone will not prevent a repetitive injury to the child . . . . In our experience errors have been made primarily in the direction of leaving the child in the home under the supervision of caseworkers in protective services and then experiencing a second and third series of injuries or death.<sup>86</sup>

Pressuring a family to accept services or keeping the status of a case vague avoids the need to decide, but if the children are being abused or neglected, they are left inadequately protected and, thus, exposed to greater harm. Conversely, if the children are being adequately cared for, this reluctance to make the concrete, hard decisions of protective work is a violation of the family's fundamental right to be left alone—free from agency, and social, interference. Furthermore, the existence of these phantom cases and the resort to inappropriate dispositions makes agency planning impossible because planners cannot know the real size of a caseload and cannot gauge real service needs.

The primary solution to the inadequacy of child protective services must be found in better training, better supervision, and the gradual recruitment of sufficiently qualified staff. Nevertheless, if a central register monitors how reports are handled, it can help to ensure that investigations are properly and promptly performed and that needed services are provided. If a register can receive and record reports immediately, and if it can review them for their timeliness, it can help

85. Grumet, *The Plaintive Plaintiffs: Victims of the Battered Child Syndrome*, 4 FAM. L.Q. 296, 306 (1970).

86. Kempe, *Some Problems Encountered by Welfare Departments in Management of the Battered Child Syndrome*, in THE BATTERED CHILD 169, 170 (Helfer & Kempe eds. 1968).

managers monitor and measure the system's overall performance while at the same time presenting at least a partial picture of the problems with which the system must deal. A register which monitors follow-up reports, then, can provide immediate added assurance that investigations are performed and children protected—by sharpening child protective accountability.

Without such a system, program administrators cannot regularly and easily assess the functioning of the child protective system; they cannot identify breakdowns or bottlenecks in service. For example, because no follow-up reports were required, one state's central register, although showing that reports had doubled in one year, did not reveal that the protective staff in the county in which the state capital was located had established what they called "the Bank." Uninvestigated reports of abuse and neglect were "put in the Bank." At one point, there were one hundred and forty cases in the Bank. Cases went into the Bank because there were not enough protective workers to handle the agency's workload. Workers tried to sift cases, seeking to put only less serious or less urgent situations in the Bank. Nevertheless, a random review of three cases revealed that, while two were reports of generalized neglect, one report was from a private physician reporting a case of "severe malnutrition." Yet, six weeks after this report was made, it had not been investigated. Without monitoring, program administrators cannot discover things like "the Bank" or what, in another state, was called "the pending caseload," that is, uninvestigated cases stacked on the desks of workers.

Furthermore, a system that monitors case handling from intake through disposition by means of progress reports to the register encourages workers to make early and precise decisions on the protective objectives and services needs of individual clients. Requiring structured follow-up reports to a register can help guide the worker's decision-making process by specifying decision points and by verbalizing service goals. With this information a register can produce individual reports designed to monitor each child's and each family's progress in achieving the goal initially set. It also can generate case management information which can identify, among other things, time spent at each stage of the protective decision-making process, services provided compared to services needed or requested, and total caseworker time spent with each case, classified by type of case and type of activity.

Some states are developing such monitoring systems. For example, the Wisconsin State Register reviews follow-up forms in order "(a) to assure completeness and to follow-up on missing or unclear informa-

tion, (b) to identify incidences of unmet needs and notify appropriate regional agencies: [such as] [l]ack of promptness in report and follow-up [and] inappropriate intervention."<sup>87</sup> Similarly, in Alabama, though its statewide index is not called a central register, the State Department of Pensions and Securities maintains a central file on each child abuse case:

which contains the report of the abuse and correspondence from the County Department relative to the family situation and protective service which is being offered. If [the Department does] not feel that appropriate protective action has been taken when [it] receive[s] the report from the county department, [it] follow[s] up by letter or telephone.<sup>88</sup>

In New York, protective service workers are required to send to the register a preliminary report of the investigation within seven days and follow-up reports at regular intervals thereafter. This requirement prevents workers from avoiding the decisions that must be made in difficult cases. In addition, the inclusion of progress reports from caseworkers in the register allows statewide monitoring of cases, provides a centralized and constantly updated picture of the management of each case, and lessens the danger of lost referrals and lost information.<sup>89</sup>

It may seem unfair and unwise to perform this kind of policing of child protective workers. However, they are individuals functioning within bureaucracies that can be unresponsive to the needs of those they are meant to serve. A register system with follow-up capability sharpens agency and worker accountability. It can be an unparalleled tool for managing and monitoring the handling of cases in this age of geographically dispersed and bureaucratically structured child protective agencies. Although many workers bridle at the notion of being monitored by a machine, conscientious and competent workers should not be troubled by such accountability, which is only another form of supervision. Indeed, they often welcome such a "fail-safe" system to help them keep track of the many tasks that must be performed to protect children and serve families.

87. See WIS. MANUAL, note 54 *supra*.

88. Letter dated November 19, 1973, on file at the National Center on Child Abuse and Neglect, Department of Health, Education & Welfare, Washington, D.C.

89. See generally N.Y. SOC. SERV. LAW § 422 (McKinney 1976 & Supp. 1977-78).

### III. MODE OF OPERATION OF AN UPGRADED REGISTER

#### A. *Institutional Auspice*

Deciding which agency receives, stores, and monitors reports sets the tone of the entire child protective process. In states where reports of suspected child abuse and neglect are kept by a law enforcement agency, many professionals and private citizens are hesitant to report cases to the register and, in fact, feel hostile towards it. They believe that law enforcement maintenance of a register creates a greater possibility of criminal prosecutions. Since the protective process can succeed only with the willing cooperation of potential reporters, this hostility almost compels a decision in favor of storing reports in a social service agency. Because of this hostility to law enforcement record keeping and because of police disinterest, the central register in all states except California is operated by a social service agency.

If a register is to perform follow-up monitoring of case handling, it must be placed within the social agency which has general child protective responsibility in the community. Forcing one agency to supervise the day-to-day activities of another agency with different values and operating premises would be unwise and unworkable. It is unlikely that child protective workers would be agreeable to making follow-up reports to—in effect, being supervised by—a law enforcement agency. Therefore, the agency in which the register is placed should have responsibility for the supervision or administration of the child protective service. Ordinarily, this will be the public social services agency, variously called the department of social services, the department of public welfare, the department of health and welfare, or the department of human resources.

The statutory language could be as follows:

The State Department [of Social Services] shall establish a “statewide child protection center.” The center shall be a separate organizational unit, singly administered and supervised within the State Department, with sufficient staff of sufficient qualifications and sufficient resources, including telephone facilities to fulfill the purposes and functions assigned to it by this Act, other laws, or administrative procedures.<sup>90</sup>

The mandate that there be sufficient staff and other resources including sufficient telephone facilities may seem obvious and even gratuitous, but some facilities, established without sufficient supportive resources, have become serious bottlenecks in the handling of child

90. Draft Model Act, *supra* note 28, at § 21(a).

protection cases. It is important that the register be assured adequate agency recognition and resources.

### *B. Geographic Scope*

Larger geographic coverage means a greater potential to match previous reports for diagnostic and evaluative purposes, a greater likelihood of unbiased monitoring of the protective process, and a greater opportunity to achieve economies of scale. But greater too is the likelihood that the bond of local cooperation and trust will be broken, and greater too is the danger of unauthorized dissemination of personal information. The larger quantity of data attracts more attention and the broader geographic coverage means that register staff must respond to inquiries from distant and unknown callers. The smaller the geographic area covered, the easier it is to secure the confidentiality of records and the greater the potential for the development of a cooperative, trusting relationship between the register staff and those who must use the register. These conflicting considerations have to be balanced.

In the past, the creation of a national register to insure the fullest diagnostic capability has been advocated. People today are transient not only within an individual state but across our whole country as well. "That there have been a number of reports made and recorded in the central registry in California, for example, is of little value to a physician and protective service agency in New York, if the suspect party is now living there."<sup>91</sup> In line with this thinking, Texas law, for example, provides: "The department may adopt rules and regulations as are necessary in carrying out the provisions of this section. The rules shall provide for cooperation with other states in exchanging reports to effect a national registration system."<sup>92</sup> However, nothing is clearer than that there will not be a "national register" in the foreseeable future—nor should there be.

91. Fraser, *supra* note 10, at 519 (footnotes omitted). This article concludes:

In order to coordinate state reports, we have two alternatives: 1. Conceivably, we could create a Federal Central Registry which would house all reports of suspected child abuse in the country. Immediate problems arise with this concept when it is noted that we do not have one standardized definition of abuse; some states do not have a centralized collection point for reports, and the Federal government has no power to require the reports from states to be sent to a Federal Central Registry. From a practical point of view, however, standardizing of the definition of abuse and the forwarding of reports to a Federal Central Registry could be accomplished as a condition precedent to receiving federal funds allocated to fight child abuse. 2. The second alternative is to encourage each state to develop its own central registry and voluntarily exchange child abuse reports with other states. This approach seems to be more acceptable to the various states, and I would suggest that it is much more likely to become a reality than any form of Federal Registry.

*Id.* at 519-20.

92. TEX. FAM. CODE ANN., tit. 2 § 34.06 (Vernon 1975).

Americans do move; many families move often, including some with abused or neglected children. Although some families move to escape the jurisdiction of a child protective agency or the police, most of their movement appears to be prompted by the same social and economic forces that motivate other families to move. There is much flow within cities, between city and suburbs, between suburban communities surrounding the same urban area, from the South to the North, and from all parts of the country to the "sunbelt" states. For example, in one month a family might be in New Jersey and the next month it might be in Connecticut, not because the parents are trying to escape the jurisdiction of a child protective agency, but because they have moved from one suburb to another suburb of the same central city—New York. But this movement is not so great nor so unpredictable that it cannot be taken into account in the operations of a state or local register.

The need to gain information from other states can be dealt with, in most situations, by individual requests to sister states. The few situations where this would not suffice simply do not justify the dangers to civil liberties inherent in a nationwide register system which, in any event, would probably be an unmanageably cumbersome bureaucracy many would refuse to use.

The strongest argument in favor of registers with statewide—as opposed to county-by-county—coverage is economic. The kind of upgraded register described in this article can be operated economically only for large populations, thus avoiding costly duplication by limiting the number of register systems. All states have many large and small counties. A register would be prohibitively expensive for a small county. If each county were to set up its own register, it would have to invest substantial amounts of social workers, clerical help, storage retrieval capability, and staff supervision in its operation. If a register is to operate twenty-four hours a day, then the expense of having personnel on duty around the clock becomes hard to justify for all but the very largest of communities. Anyone who has ever tried to convince a local governing board to spend money knows how difficult it would be to convince its members to set up a twenty-four hour, seven-day-a-week service that might be needed after hours no more than once a week. And yet, in sparsely populated counties, it probably would not be used more frequently. No one would propose that each of Georgia's 159 counties or Texas' 254 counties have its own central register, but the whole state could afford to establish one. For example, New York's statewide register, which handles over thirty-five thousand cases

a year, costs more than \$400,000 to operate annually. But this represents only a small percentage of the state's total child protective budget. To reproduce this system in New York's Erie County, which has a population of 1.1 million would cost almost half the total amount for the state-wide register. Why? Because even when the register is not busy, overhead costs accrue. Although calls are not always coming in, staff and records must always be available. So, although New York law permits every county to set up its own twenty-four hour, seven-day-a-week register, only two counties other than the City of New York have decided to do it. New York State's other fifty-five counties joined the statewide register system because they could not justify or afford operating their own registers.

Statewide registers are usually established because of the economies of scale involved and because experience demonstrates the wisdom of assigning to the state the responsibilities for monitoring and assisting the local child protective program. Thus, all forty-seven existing central registers are statewide in coverage. In addition, New York and Tennessee have a two-tier system, with registers at the city or county level as well as the state level.<sup>93</sup> Nevada mandates a register within the central office of the welfare division and, starting in 1977, allows the division to designate county-run hospitals in counties of over 100,000 people to act as regional registers.<sup>94</sup> Delaware requires a register in each county.<sup>95</sup>

### C. *Twenty-four Hour Hotline*

To assist in case assessment, a register must be conveniently available whenever information is needed by those who must make a diagnosis or evaluation. Although most child protective decision-making is made between nine and five on weekdays, serious situations requiring immediate information regularly arise after hours or on weekends. For example, a child is brought into an emergency room with suspicious injuries at 2 a.m. and the parents want to take him home; or, the police respond to a neighbor's call in the middle of the night to find a bruised child at home; or, a protective worker makes an emergency home visit on a Saturday morning and finds the children alone. If these decision-makers are denied information on past records because the register office is closed, their decisions must be made in the dark.

A report of the American Academy of Pediatrics comments:

93. *E.g.*, N.Y. SOC. SERV. LAW §§ 422, 424(2) (McKinney 1976 & Supp. 1977-78).

94. NEV. REV. STAT. § 432.100 (1977).

95. DEL. CODE tit. 16, §§ 905(B), (C) (Supp. 1977).



A registry must be accessible at all times. It must have complete and accurate identifying information, not relying on addresses which may change. It should retain a suspected case, even if not confirmed, long enough to match with that child's next medical encounter for treatment of inflicted injury so that the family can be brought under the influence of the child abuse team. Lacking these attributes, a registry may serve a variety of statistical reporting and program purposes; but it will have no immediate clinical utility.<sup>96</sup>

Thus, many states have established a statewide, toll-free telephone number for the handling of reports. Usually anyone, whether or not mandated by law, can call to report cases of suspected child abuse and neglect, and carefully specified persons can call to determine the existence and status of prior reports in order to evaluate the condition or circumstances of the child before them.

The Model Act envisions a twenty-four-hour-a-day seven-day-a-week, toll-free telephone number similar to those already established in some states. The single number is meant to encourage reporting by simplifying and facilitating the reporting process. There would be one easily publicized phone number for the entire state. The relevant sections of the draft Model Act provide:

All reports of known or suspected child abuse or neglect made pursuant to this Act shall be made immediately by telephone to the statewide child protection center on the single, statewide, toll-free telephone number established by this Act. They shall then be immediately transmitted to the appropriate local child protective service, unless the appropriate local plan for child protective services provides that oral reports should be made directly to the local child protective services.<sup>97</sup>

. . . .

Upon receiving an oral or written report of known or suspected child abuse or neglect, the statewide center shall notify immediately, either orally or electronically, the local service of a previous report concerning a subject of the present report or other pertinent information. In addition, upon satisfactory identification procedures, to be established by regulation or the state department, any person or official legally authorized to have access to records relating to child abuse and neglect may request and shall be immediately provided the information requested in accordance with the requirements of this Act.<sup>98</sup>

Nevertheless, the draft Model Act encourages, as do the laws of

96. Watson, A DESCRIPTIVE STUDY OF NINE HEALTH BASED PROGRAMS IN CHILD ABUSE AND NEGLECT: FINAL REPORT FROM AMERICAN ACADEMY OF PEDIATRICS SURVEY OF NINE HEALTH BASED CHILD ABUSE AND NEGLECT PROGRAMS 97 (April 1974) [hereinafter cited as Watson].

97. Draft Model Act, *supra* note 28, at § 13(a).

98. *Id.* at § 21(d).

some states,<sup>99</sup> flexibility in how reports should be received and referred for investigation. The statewide child protection center could receive all reports for transmission to the local agency, or, if the local agency developed a telephone reception facility pursuant to its local plan for child protection services, the local agency could accept calls at all times or only at specified times. For example, the local agency could accept calls during normal weekday business hours (9:00 a.m. to 5:00 p.m.) and the statewide center could accept all reports made after hours and on weekends. Thus, the telephone would be answered by competent, professional staff at all times. In most circumstances, persons answering the telephone should be social workers or have comparable backgrounds to enable them to offer effective and sensitive assistance to parents calling for help, as well as those reporting abuse or neglect. Any person, in any part of the state, could call to report a case, and the call would be routed in accordance with the administrative arrangements made between the state department and the local child protective service. In this way, the local agency and state department could develop individualized operating plans based upon local capability, and local responsibilities could be increased as capabilities increased.

#### *D. The Contents of an Upgraded Central Register*

A central register is no better than the quality of its contents and their potential for useful application. "Garbage in=gabrage out" is the inflexible law of information systems. Passage through a central register will not transform meaningless information into the basis for informed decision-making. A register that becomes a storehouse of immensely detailed information, unrelated to any reasonably defined purpose, is like an over-filled and disorderly attic in which priceless objects cannot be found amidst all the junk.

The contents of the central register must accurately reflect the handling of child abuse and neglect cases in the community. All cases of neglect, sexual abuse, and other forms of child maltreatment, as well as child abuse, should be recorded in the register (1) because the "line dividing abuse and neglect is a precarious one at best";<sup>100</sup> (2) because knowledge of a previous report or treatment effort involving child neglect can often be crucial in assessing an abuse situation; (3) because neglect can be just as damaging and life-threatening as abuse; and (4) because the great bulk of child protection cases, perhaps eighty per cent

99. *Id.* at §§ 16(c) & 18.

100. N.Y. CITY TASK FORCE REPORT, *supra* note 83, at 14.

of the total, involve situations of neglect and other forms of maltreatment, not abuse, and to exclude them from monitoring and statistical efforts would ignore hundreds of thousands of endangered children. The register must also include the large numbers of cases reported independently of the reporting law and which the child protective service handles outside its provisions.

At the present time, four states include only the initial reporter's reports. Two states include only reports of founded or indicated investigations.<sup>101</sup> Three states include reports of founded or indicated investigations plus follow-up reports.<sup>102</sup> Three other states include only the reports of investigations.<sup>103</sup> One other state includes these investigatory reports plus follow-up reports.<sup>104</sup> One state includes initial reports and investigatory reports.<sup>105</sup> Seven other jurisdictions include initial reports, investigatory reports, and follow-up reports.<sup>106</sup>

The absence of updated or follow-up information, indicating the validity and status of each report, is another grave shortcoming of most existing register systems—one with great potential for harm. A register must have current information on the handling of cases through a series of follow-up reports. Otherwise, protective workers and other professionals cannot rely on the register to disclose prior reports or the status of past treatment efforts, administrators cannot rely on the register to measure agency performance, and planners cannot rely on the register to assess programmatic needs.<sup>107</sup>

However, proliferation of paper work that no one really needs or uses is not justifiable. To the detriment of their service responsibilities, protective workers often are saddled with long, complicated, and time-consuming forms, which must be filled out in order to satiate the register's hunger for "data." There is no reason to accumulate irrelevant or unusable data unless there is an unmet need to waste money, effort, and good will.

If a central register is used only for research and planning, it would be a waste of staff time to require detailed register reports on the

101. OR. REV. STAT. § 418.765 (1977); 1977 S.C. ACTS 187.

102. 11 PA. CONS. STAT. ANN. § 2214 (Purdon Supp. 1977); VT. STAT. ANN. tit. 13, § 1356 (Supp. 1977); Act 2-53, § 201, 24 D.C. REGISTER 748, July 22, 1977.

103. ALASKA STAT. § 47.17.040 (A) (Supp. 1976); FLA. STAT. ANN. § 827.07(7) (West 1976); OKLA. STAT. ANN. tit. 21, § 846 (West Supp. 1976).

104. NEV. REV. STAT. § 432.100 (1977).

105. ARIZ. REV. STAT. § 8-546.03 (A), (B) (1974).

106. ALA. CODE tit. 26, § 14.8(A) (1977); ARK. STAT. ANN. § 42-818 (1977); COLO. REV. STAT. § 19-10-114 (Cum. Supp. 1976); IOWA CODE ANN. §§ 235A.12.14, .222.24 (West Supp. 1977-78); MO. ANN. STAT. § 210.145(2) (Vernon Supp. 1977); N.Y. SOC. SERV. LAW § 422 (McKinney 1976 & Supp. 1977-78); A.S. CODE tit. 21, § 2912(a)-(c) (1977).

107. See Draft Model Act, *supra* note 29, at § 21(e).

handling of every case; there is no need to accumulate data on every case. For example, there does not have to be a complete accounting of all reported cases in order to determine, in a statistically valid manner, the age distribution of the children reported, the distribution of the forms of maltreatment reported, or the characteristics of clients. Random sampling of the caseload would do.

On the other hand, if a register is used to assist in assessing the danger to a child by providing information on prior reports and if it is used to sharpen child protective accountability by monitoring the handling of investigations, it needs more detailed information on cases. At a minimum, each record should contain the following information:

*Identification and demographic data*, such as: the name, address, age, sex, and race of the child, his parents or other person responsible for his care; the nature and extent of the child's abuse or neglect, including any evidence of prior injuries, abuse, or maltreatment to the child or his siblings; the name of the person or persons suspected to be responsible for the abuse or neglect; and family composition and economic situation.

*Information about the initial report*, such as: the person making the report, his occupation, and where he can be contacted; the actions taken by the reporting source, including the taking of photographs and X-rays, the placement of the child in protective custody, or the notification of the medical examiner or coroner; and the date and time the report was received.

*Information about the handling of the report*, such as: the results of the initial investigation by the child protective agency, including an evaluation of the risk to the child and his siblings; the actions taken or contemplated; the determination of whether the report was unfounded or indicated; the plan for rehabilitative or ameliorative treatment; services offered and services accepted; and an evaluation of the success of the child protective and treatment process, including an explanation of any unmet needs of the child and family and the cause thereof, specifying the unavailability of services and the need for additional services.

The relevant section of the draft Model Act provides:

- (i) The statewide center shall prepare, print, and distribute initial, preliminary, progress, and final reporting forms to each local child protective service.
- (ii) Initial written reports from the reporting source shall contain the following information to the extent known at the time the report is made: the names and addresses of the child and

his parents or other persons responsible for his welfare; the child's age, sex and race; the nature and extent of the child's abuse or neglect, including any evidence or prior injuries, abuse, or neglect of the child or his siblings; the names of the persons apparently responsible for the abuse or neglect; family composition, including names, ages, sexes, and races of other children in the home; the name of the person making the report, his occupation, and where he can be reached; the actions taken by the reporting source, including the taking of photographs and X-rays, placing the child in protective custody, or notifying the medical examiner or coroner; and any other information the person making the report believes might be helpful in furtherance of the purposes of this act. (iii) Preliminary reports from the local child protective service shall be made no later than seven days after receipt of an initial report and shall describe the status of the child protective investigation up to that time, including an evaluation of the present family situation and danger to the child or children, corrections or updating of the initial report, and actions taken or contemplated. (iv) Progress reports<sup>108</sup> from the local service shall be made at such regular intervals as the regulations of the state department establish, and shall describe the child protective services' plan for protective, treatment, or ameliorative services and the services accepted or refused by the family. (v) Final reports from the local service shall be made no later than 14 days after a case is determined to be unfounded or is closed for other reasons and shall describe the final disposition of the case, including an evaluation of the reasons and circumstances surrounding the close of the case and the unmet needs of the child or family, and the causes thereof, including the unavailability or unsuitability of existing services, and the need for additional services.<sup>109</sup> (vi) The foregoing reports may contain such additional information in the furtherance of the purpose of this Act as the state department, by regulation, may require. (vii) All of the foregoing reports shall also be required of the child protective service in cases in which the local service foregoes a full protective investigation pursuant to the local plan for child protective services and subsection 16(d) of this Act. (viii) For good cause shown, the local service may amend any report previously sent to the statewide center. (ix) Unless otherwise prescribed by this Act, the contents, form, manner, and timing of making the foregoing reports shall be established by regulation of the state department.<sup>110</sup>

### *E. Manual vs. Computerized Registers*

A computerized central register combined with a statewide system of remote access terminals, already installed in a number of states and

108. Progress reports are considered optional because the cost of operating a system to store and monitor them may be beyond the resources of some states.

109. *But see* § 16(j) of the draft Model Act, which authorizes the child protective service to provide services to the child or family if they are otherwise in need of such services and voluntarily accept them.

110. Draft Model Act, *supra* note 28, at § 21(e).

being developed in many others, would be the optimum system for larger states seeking to cope with enormous child protective caseloads.<sup>111</sup> Still, an upgraded central register can be satisfactorily operated without electronic data processing assistance.<sup>112</sup>

New York State, for example, manually processed 29,912 initial reports and over 75,000 progress reports during the first full year of its new register without a computer system. Staff was never more than one or two days behind in this mountain of work, which is about the same as, or perhaps less than it would be, if it were computerized. The process of monitoring, as the Wisconsin Division of Family Services County Manual demonstrates, can be quite simple:

Set up a reminder system for five and ten working days and ninety calendar days. In small agencies with only an occasional report, a note on the clerk's desk calendar should be adequate. Larger agencies may need to set up a file with appropriate sections to accomplish such a system.<sup>113</sup>

#### *F. The Relationship Between an Upgraded Central Register and a State's Social Service Information System*

It is beyond the scope of this article to do more than raise the issue of the relationship between an upgraded central register and a state's Social Service Information System, SSIS. In all important respects, the SSIS could be organized to perform all the functions of the upgraded central register described in this article. A number of states are already in the process of incorporating their central registers into SSIS, as sub-systems. Clearly, from the points of view of efficiency and economy, this approach should be considered carefully by all states.

111. The need for the application of computer technology to the child welfare system is well documented. See, e.g., Council of Voluntary Child Care Agencies, INFORMATION REQUIREMENT STUDY (Systems Dynamics Incorporated. Undated); New York City Policy Planning Council, CHILD WELFARE SERVICES MANAGEMENT INFORMATION SYSTEM (February 26, 1971); Allen & Horniman, CHILD WELFARE AND THE COMPUTER (Edwin Gould Foundation for Children, New York, 1969).

112. "By the 1960's, attractive prices, persuasive salesmen, and ingenious computer software services had stimulated the introduction of automated service processing equipment into a great many record keeping organizations, sometimes with far too little attention to the objectives and cost of automation. Although there were many examples of diseconomies and a few outright failures, the successes were so spectacular that the prestige of having a large scale data processing capacity often prompted managers to keep their computers running even at a financial loss." Weinberger, *supra* note 30, at 8.

113. WIS. MANUAL, *supra* note 54, at § 1661.40(e).

#### IV. PROTECTING THE PRIVACY OF THE CHILDREN AND FAMILIES LISTED IN THE CENTRAL REGISTER

As every man goes through life he fills in a number of forms for the record, each containing a number of questions. . . . There are thus hundreds of little threads radiating from every man, millions of threads in all. If these threads were suddenly to become visible, the whole sky would look like a spider's web, and if they materialized as rubber bands, buses, trams and even people would all lose the ability to move, and the wind would be unable to carry torn-up newspaper or autumn leaves along the streets of the city. They are not visible, they are not material, but every man is constantly aware of their existence. . . . Each man, permanently aware of his own invisible threads, naturally develops a respect for the people who manipulate the threads.<sup>114</sup>

Implicit in most recent child protective legislation is the legislative finding that the balance between children's rights and parents' rights must be weighted in favor of protecting children. Nevertheless, it is important to protect traditional American values of freedom and legality while trying to protect endangered children. For, the benign purposes and rehabilitative services of child protective agencies do not prevent them from being threatening and sometimes destructive—though well-meaning—coercive intrusions into family life.

The fact that many central registers contain the unverified suspicions of thousands of individual reporters, who are strangers to the agency operating the register and who are not subject to its administrative supervision, justifies the great concern over personal rights that such information systems arouse. Many of the reports received, stored, and made easily accessible by central registers prove to be unfounded.<sup>115</sup>

However, even when the material in the register is true, there is a need to protect the rights and sensibilities of those who are the subjects of the report. For, the register's records contain information about the most private aspects of personal and family life, which, if improperly disclosed, could stigmatize the future of all those mentioned in the report.<sup>116</sup> One worker voiced this concern:

I would like to say that I have some real concern about confidentiality, that I find too often in my practice that names and case records travel between one agency within a city or within a state. There seems to be a careless concern over where we as workers are

114. A. SOLZHENITSYN, *CANCER WARD* (1968).

115. Sometimes, the reports are made by malicious neighbors or relatives; more often, the reporters, though well-intentioned, are mistaken in their suspicions.

116. See *Symposium, Computerized Criminal Justice Information Systems: A Recognition of the Competing Interests*, 22 *VILL. L. REV.* 1171 (1977).

feeding information obtained by hearsay. When this feeds into a state registry which begins to feed into a federal register which feeds into AFDC welfare records and other records and then disseminates all this into five known national filing systems, I think there has to be a great deal of concern.

I have some real concerns about what I have been hearing at this conference of the idea of having some central register that anyone could call into for information. Maybe I am speaking from a position of being a paranoid parent, but I feel very uncomfortable knowing that my house insurance or my car insurance is dependent on a report of suspected child abuse. And by the way, automobile companies are doing exactly this; they are identifying high risk groups as a way of picking up potentially poor insurance risks and one of the things they are looking at is family stress.

So I feel that we are no longer talking about when Big Brother is going to come; we are now trying to fight off Big Brother.<sup>117</sup>

Yet, in most states, the subjects of reports are not informed that their names have been entered in the central register; they are not permitted to see the file containing derogatory allegations; they cannot get untrue or unfounded charges removed from the register; and they have no right to appeal to a higher administrative authority.

Who will have access to information contained in the registry? The mere fact that an individual's name is listed in the central registry carries with it a stigma of wrongdoing and guilt and can be potentially damaging if this information is made public. Obviously, this information should only be available to those persons with a bona fide legal interest and with the proper safeguards. However, a number of states which have legislatively created a central registry have no provision stating who shall have access to the recorded reports, how one does gain access and makes no provision for protecting the suspect party's interest . . . they simply legislate that there shall be a central registry.<sup>118</sup>

Only as the result of the eligibility requirement of the Federal Child Abuse Prevention and Treatment Act<sup>119</sup> is there now provision in most states to ensure the confidentiality of records.

The capability of electronic retrieval of information magnifies both the capabilities and the dangers of a central register system. As more states seek to make the information in their registers more acces-

117. AHA Proceedings, *supra* note 40.

118. Fraser, *supra* note 10, at 515-16.

119. 42 U.S.C. § 5101 (Supp. V 1975), *as amended by* Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Pub. L. No. 95-266. In order to qualify for funding under the Federal Act, a state must "provide for methods to preserve the confidentiality of all records in order to protect the rights of the child, his parents or guardians." *Id.* at § 5103(b)(2)(E). Under the regulations that implement this section, a state must have a law "which makes such records confidential and which makes any person who permits or encourages the unauthorized dissemination of their contents guilty of a crime." 45 C.F.R. § 1340.3-3(d)(5) (1976).



sible and more usable, greater consideration will have to be given to the uses to which, and the conditions under which, the material should be put. In the words of former HEW Secretary Caspar Weinberger:

[I]t is important to be aware, as we embrace this new technology, that the computer, like the automobile, the skyscraper, and the jet airplane may have some consequences for American society that we would prefer not to have thrust upon us without warning. Not the least of these is the danger that some record-keeping applications of computers will appear in retrospect to have been oversimplified solutions to complex problems, and that their victims will be some of our most disadvantaged citizens.

One of the most crucial challenges facing government in the years immediately ahead is to improve its capacity to administer tax dollars invested in human services. To that end, we are attempting . . . to move away from the fragmented social service structures of the past, which have dealt with individuals and with families as if their problems could be neatly compartmentalized; that is, as if they were not people. Many of these measures could result in more intensive and more centralized record keeping on individuals than has been customary in our society. Potentially, at least, this is a double-edged sword. . . . On the one hand, it can help to assure that decisions about individual citizens are made on the basis of accurate, up-to-date information. On the other, it demands a hard look at the adequacy of our mechanisms for guaranteeing citizens all the protection of due process in relation to the records we maintain about them.<sup>120</sup>

The usual response to these civil liberties concerns is that protecting innocent young children is more important than safeguarding the rights of abusing parents.<sup>121</sup> Indeed, there are legitimate and pressing needs to maintain information in central registers, and the only way to eradicate all danger of inappropriate disclosure of reports would be to abandon their use. But the necessity of storing this information should not forestall efforts to prevent its misuse. If society is to intrude into family life without the free consent of parents, it must do so with due regard to parental rights, as well as to the needs of children. Thus, even though the experience of all states shows that only a handful of reports are made maliciously, as states seek to improve and upgrade their child protective systems generally, they should also improve the

120. Weinberger, *supra* note 30, at v-vi.

121. *E.g.*, in Ohio official comments:

Letter dated December 29, 1972, on file at the National Center on Child Abuse and Neglect, Department of Health, Education and Welfare, Washington, D.C.

We both understand that the concept of due process of law involves a balancing test between the rights of the people as individuals and the rights of the people as a collective state. It is my opinion that the rights of people as a collective state to ensure that the children within the state are free from being abused and neglected outweighs any possible, though I believe highly improbable, stigmatization of the people who are the subject matter of this report.

methods they use to protect the rights of parents. Legal safeguards can be provided to protect parental rights without unreasonably endangering children. State law should accord to both the child and the parent the full safeguards of fundamental fairness, confidentiality, and due process of law. While meant to protect helpless and endangered children, the law and the register also can be designed to protect children's and families' legitimate rights to privacy. All of the civil libertarian criticisms of central registers, except for the one based on a general fear of all data banks, can be met by intelligent planning.

After studying the competing needs of administrative efficiency and the rights of citizens, the U.S. Department of Health, Education, and Welfare's Secretary's Advisory Committee on Automated Personal Data Systems made a series of recommendations concerning the maintenance of social data records. The following six recommendations of the Advisory Committee are directly applicable to central register information systems:

There must be no personal data record-keeping systems whose very existence is secret.

There must be a way for an individual to find out what information about him is in a record and how it is used.

There must be a way for an individual to prevent information about him that was obtained for one purpose from being used or made available for other purposes without his consent.

There must be a way for an individual to correct or amend a record of identifiable information about him.

Any organization creating, maintaining, using, or disseminating records of identifiable personal data must assure the reliability of the data for their intended use and must take precautions to prevent misuse of the data.

There should be civil and criminal penalties for unauthorized use of information.<sup>122</sup>

It is worth noting that such protections are parallel to those being established for credit and other financial records.

A recent United States District Court case, *Sims v. State Department of Public Welfare*,<sup>123</sup> although an apparent departure from recent federal abstention doctrines, seems to be a harbinger of more careful judicial scrutiny of the operations of state register systems. Although the basis and full reach of the court's decision are unclear, the court held that the method which Texas used to implement the statutory provision for a central register was unconstitutional. While the court was careful to state that the state may maintain investigative files, it found

122. Weinberger, *supra* note 30, at xx.

123. 438 F. Supp. 1179 (S.D. Tex. 1977).

that the specific mode of operation of the Texas register was “an unconstitutional infringement on the rights of the parents.”<sup>124</sup> The court’s decision seems rooted in the court’s concern (1) that persons listed in the register were not given notice of their being in the data system, were not given access to the data, and had no opportunity to have material in the register amended, expunged, or updated; and (2) that cases were labelled as “proven” based merely on social work investigations, without judicial review. While the *Sims* case is somewhat ambiguous, it is a clear sign that courts can now be expected to accept challenges to the operations of state register systems and, when necessary, order changes in their operations when they do not comport with fundamental due process requirements.

There are two broad needs to meet in protecting the rights of those listed in central registers:

- (1) The need to keep the information confidential and to limit access strictly to authorized persons for purposes consistent with its relatively narrow functions; and
- (2) The need to insure the accuracy and currency of the information in the record through the sealing, expunging, removing, and updating of register data.

#### *A. Confidentiality of Records*

Reports made pursuant to the reporting law—as well as any other information in the central register—should be confidential. As a result of the eligibility requirements of the Federal Child Abuse Act, over forty-two states make unauthorized disclosure of information at least a misdemeanor.<sup>125</sup>

The applicable provision of the draft Model Act states:

In order to protect the rights of the child, his parents, or guardians, all records concerning reports of noninstitutional child abuse and neglect, including reports made to the state department, state center, state central register, local child protective services, and all records generated as a result of such reports, shall be confidential and shall not be disclosed except as specifically authorized by this Act or other applicable law. It shall be a misdemeanor to permit, assist, or encourage the unauthorized release of any information contained in such reports or records.<sup>126</sup>

124. *Id.* at 1192.

125. *E.g.*, ALA. CODE tit. 26 § 14.8 (1977); ARK. STAT. ANN. § 42-818(10) (Supp. 1975); N.Y. SOC. SERV. LAW § 422(10) (McKinney 1976 & Supp. 1977-78); VT. STAT. ANN. tit. 13, § 1356(c) (Supp. 1977).

126. Draft Model Act, *supra* note 28, at § 24(a).

Such provisions are usually limited to child protective or social service records; they do not extend to juvenile court records, which have their own legislatively established confidentiality. Also, they do not extend to criminal justice system records, which ordinarily are considered public documents. For example, the draft Model Act provides: "Nothing in this Act is intended to affect existing policies or procedures concerning the status of court and criminal justice system records."<sup>127</sup>

Nevertheless, the information in child abuse and neglect records must be available to those who need it in order to make critical, often emergency, child protective decisions. The question is: Who should have access to these records? Limiting access necessarily limits use, while broadening access increases the possibility of misuse.

In general, states take three approaches to access to records. Some statutes prohibit access to anyone outside the child protective agency;<sup>128</sup> others make the records confidential, but authorize the responsible state agency to issue regulations allowing some persons access;<sup>129</sup> and others enumerate who has access in the statute itself.<sup>130</sup>

As a general rule, states that allow exceptions follow the long-standing approach taken in the HEW Regulations implementing Title IV of the Social Security Act. These permit access for "purposes directly connected with" the administration of the program.<sup>131</sup> The HEW regulations implementing the Federal Child Abuse Prevention and Treatment Act enumerate the specific persons, officials, and agencies and the specific situations under which the access is deemed "directly connected with the administration" of the child protective program.<sup>132</sup>

Twenty-eight of the thirty-nine states and three jurisdictions which establish their register by statute have included provisions making exceptions to the confidentiality of records. Eight states give the department which runs the register the power to regulate access.<sup>133</sup> Six states only authorize exceptions if a court or the department has ordered the

127. *Id.* at § 24(e).

128. *E.g.*, LA. REV. STAT. ANN. § 46-65(F)(1) (West Supp. 1977).

129. *E.g.*, ILL. REV. STAT. ch. 23, §§ 2061, 5035.1 (Supp. 1977).

130. *E.g.*, D.C. CODE § 16-2331(b) (1973); IOWA CODE ANN. § 235A.15 (West Supp. 1977-78); N.Y. SOC. SERV. LAW § 422(4) (McKinney 1976 & Supp. 1977-78); WASH. REV. CODE ANN. § 26.44.070 (Supp. 1977).

131. 45 C.F.R. § 205.50 (a)(1)(i) (1976).

132. *Id.* at § 1340.3-3(d)(5).

133. CONN. GEN. STAT. ANN. §§ 17-38(a),(g),-47(a) (Supp. 1977); DEL CODE tit. 16, §§ 905(b), 909 (Supp. 1977); ILL. REV. STAT. ch. 23, §§ 2061, 5035.1 (Supp. 1977); N.H. REV. STAT. ANN. § 169.44, .45 (1976); N.C. GEN. STAT. § 110-122 (1978); TENN. CODE ANN. § 37-1209 (Supp. 1977); TEX FAM. CODE ANN. tit. 2, § 34.08 (Vernon Supp. 1977); VA. CODE §§ 63.1-53,-248.8 (Cum. Supp. 1977).

data to be released.<sup>134</sup> Only one state specifies that there shall be no access to information in the register.<sup>135</sup>

Twenty-three jurisdictions allow agencies investigating reports to obtain data;<sup>136</sup> seventeen specifically allow access for physicians.<sup>137</sup> Eight statutes provide access for persons contemplating placing a child in protective custody.<sup>138</sup> Fourteen jurisdictions allow access for researchers, although they impose certain limitations, the most common of which is that no identifying information should be released or that a responsible state official should approve the release. Subjects of reports can obtain information in fourteen jurisdictions, usually with certain limitations imposed, the most common of which is that identifying information about the person who made the report will not be disclosed.<sup>139</sup> Four jurisdictions allow access by other jurisdictions,<sup>140</sup> and two provide for the use of registered information by a national or regional registration system.<sup>141</sup>

### *B. Access by Child Protective, Treatment and Judicial Agencies*

As described above,<sup>142</sup> data in the register should be made available only to certain specified persons under certain specified conditions. The draft Model Act is careful to describe the professionals who should have access to register information within the context of the need to make immediate child protective decisions:

- (i) A local child protective service in the furtherance of its responsibilities;
- (ii) A police or law enforcement agency investigating a report of known or suspected child abuse or neglect;

134. ARIZ. REV. STAT. §§ 8-541, -542(B), -546.03(C) (1974); IDAHO CODE §§ 16-1621, -1623(f) (Supp. 1977); MASS. GEN. LAWS ANN. ch. 119, § 51 E, F (West 1978-79); MISS CODE ANN. § 43-24-3, -5 (Supp. 1977); MONT. REV. CODES ANN. § 10-1308 (Cum. Supp. 1977); R.I. GEN. LAWS § 40-11-13 (Supp. 1976).

135. OHIO REV. CODE ANN. § 2151-421 (Page Supp. 1977).

136. *E.g.*, COLO. REV. STAT. § 19-10-115 (Cum. Supp. 1976); MO. ANN. STAT. § 250.150(1), (2) (Vernon Supp. 1977).

137. *E.g.*, ALASKA STAT. § 47.17.040(b) (Supp. 1976); ARIZ. REV. STAT. §§ 8-541, -542(B), -546.03(C) (1974).

138. ARK. STAT. ANN. § 42-818(4), (10) (Supp. 1975); IOWA CODE ANN. §§ 235a.15, .17 to .21 (West Supp. 1977-78); MICH. STAT. ANN. §§ 722.627, .633(2) (Supp. 1977); NEV. REV. STAT. §§ 200.5045, 432.120, .130 (1977); N. J. STAT. ANN. § 9:6-8:11 (West 1973); N.Y. SOC. SERV. LAW § 422(4), (10) McKinney 1976 & Supp. 1977-78); WYO. STAT. § 14-28.14 (Cum. Supp. 1977); A.S. CODE tit. 21, § 2912(d)-(k) (1977).

139. *E.g.*, FLA. STAT. ANN. § 421.07(7), (14)(C) (WEST 1976); IOWA CODE ANN. §§ 235A.15, .17 to .21 (West Supp. 1977-78).

140. *E.g.*, Act 2-53, § 201, 24 D.C. REGISTER 748 (July 22, 1977).

141. OR. REV. STAT. §§ 418.770, .990(7) (1977); S.D. COMPILED LAWS ANN. § 26-10-12.3 (1976).

142. *See* text accompanying notes 68-76 *supra*.

- (iii) A physician who has before him a child whom he reasonably suspects may be abused or neglected;
- (iv) A person legally authorized to place a child in protective custody when such person requires the information in the report or record to determine whether to place the child in protective custody;
- (v) An agency having the legal responsibility or authorization to care for, treat, or supervise a child or a parent, guardian, or other person responsible for the child's welfare who is the subject of a report;
- (vi) A court, upon its finding that access to such records may be necessary for the determination of an issue before such court; however, such access shall be limited to *in camera* inspection, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it; [and]
- (vii) A grand jury, upon its determination that access to such records is necessary in the conduct of its official business.<sup>143</sup>

Furthermore, even when such data is properly made available, there should be a prohibition against its further release. The draft Model Act, for example, provides:

A person given access to the names or other information identifying the subjects of the report, except the subject of the report, shall not make public such identifying information unless he is a district attorney or other law enforcement official and the purpose is to initiate court action. Violation of this subsection shall be a misdemeanor.<sup>144</sup>

### *C. Access by Administrators, Legislators, and Researchers*

Perhaps the greatest controversy concerning access to records arises when child abuse and neglect records are opened to program administrators, legislators, and researchers who are pursuing their official or professional responsibilities to plan, monitor, audit, and evaluate services or to conduct other research.

Some have suggested that if those outside of designated investigatory and service agencies are given access to records, the identifying information in the records should be expunged.<sup>145</sup> But numerous types of important research, including longitudinal studies and cross-agency studies, require charting the movement of cases as they travel through time or among agencies. Such studies are crucial in gauging

143. Draft Model Act, *supra* note 28, at § 24(b)(i)-(vii).

144. *Id.* at § 24(d).

145. See, e.g., FLA. STAT. ANN. § 827.07(7) (West 1976); ME. REV. STAT. tit. 22, § 3860 (Supp. 1977); NEB. REV. STAT. § 28-1506 (1975); N.Y. SOC. SERV. LAW § 422(4)(h) (McKinney 1976 & Supp. 1977-78).

the effectiveness of different treatment techniques, and they cannot be performed without information that identifies the case and the individuals in it.

If child abuse and neglect records are to be used to improve service through monitoring and research, it is imperative that the data collected so painstakingly and at such great expense be available to outsiders, including academic policy-planners, legislators, and researchers. To do otherwise would deprive these policy-makers of information on how the system actually works, and would prevent higher level administrators and legislators from acting as informal "ombudsmen" in specific cases. Moreover, child protective agencies need the expert advice, assistance and research skills of universities and other institutions and groups. Those outside the system generally have a greater freedom to question long accepted assumptions, to explore new modes of action, and to conduct long-range research that might lead to basic changes in the structure and functioning of institutions.

Confidentiality can be exploited to shield the malfunctioning of an agency, as well as used to protect the privacy of individuals. Various advocate organizations have been denied access to their clients' records on the false grounds of confidentiality—even when they needed the records to protect their clients' rights by showing a pattern of bias or discrimination.<sup>146</sup>

Legitimate concerns for privacy can be met with adequate provisions to ensure that (1) disclosure of information to outsiders is strictly limited to situations in which the need for personal identifiers is essential to the research purpose, and (2) the information will not be improperly shared with others.<sup>147</sup> Data should be released only if the responsible state official approves the research plan, in writing.

The relevant sections of the draft Model Act grant access to:

Any appropriate state or local official responsible for administration, supervision, or legislation in relation to the prevention or treatment of child abuse or neglect when carrying out his official functions; [and]

Any person engaged in bona fide research or audit purposes; provided, however, that no information identifying the subjects of the report shall be made available to the researchers unless it is absolutely essential to the research purpose, suitable provision is made to maintain the confidentiality of the data, and the head of the state

146. Recently, lawyers in New York City were denied access to the records of their clients which, they claimed, would prove a pattern of religious and racial discrimination by foster care agencies. A court order was necessary to obtain the information sought. *See Wilder v. Sugarman*, 385 F. Supp. 1013 (S.D.N.Y. 1974).

147. *See* Draft Model Act, *supra* note 28, at §§ 24(b) & (d).

department or local agency gives prior written approval. The head of the state department shall establish, by regulation, criteria for the application of this subdivision.<sup>148</sup>

The requirement that "suitable provision [be] made to maintain the confidentiality of the data" is meant to ensure that the researcher not reveal personally identifiable data and that, at the conclusion of the research study, such identifying data be returned to the state department.

#### *D. Feedback to the Person Making the Report*

The fragmentation and impersonalization of services, which weakens the delivery of protective services, also tends to discourage reporting.

A person who makes a report of suspected abuse or neglect rarely is informed of the disposition of his report or even whether the investigation verified his suspicion. Sometimes his request for information is refused on the ground of confidentiality. As a result, he does not learn whether his diagnosis is valid; he does not know the consequences of his report, and he may feel isolated from his efforts to protect the child. How a potential reporter views the consequences of his act influences his decision whether to report. If he feels that the processing of his report will be haphazard or even destructive to the interests of the child, he may not report. Why should there be any surprise when, the next time he suspects that a child is abused or neglected, he decides not to make a report?

It is axiomatic that in any kind of reporting system its completeness depends a great deal on the satisfaction of the reporter. In other words, the reporter likes to know that his report produces some tangible results.

Public information using registry data and analysis is helpful in this respect. It cannot supplant effective response by the agency nor a cooperative relationship between reporter, worker and agency.<sup>149</sup>

"Feedback" reinforces the positive purpose of reporting in the mind of the reporter and will determine, to a great extent, his willingness to report in the future. Learning about the accuracy of the original suspicion also refines the reporter's diagnostic ability, thus improving the quality and accuracy of his future reports. Similarly, feedback to the reporter also will increase the accuracy of the data contained in the register by providing a "double check" on the accuracy of the information recorded.

148. *Id.* at §§ 24(b)(ix), (x).

149. Ireland (1975), *supra* note 16, at 115.



If the law permits sharing the results of the investigation with the person who made the original report, the register can be the vehicle for that sharing. Of course, the amount of information provided would be limited by the child's and family's right of privacy and also would depend upon the source of the report. Only a minimal feedback report would be needed for nonprofessional sources.

The relevant section of the draft Model Act reads:

Upon request, a physician or the person in charge of an institution, school, facility or agency making a legally mandated report shall receive a summary of the findings of and actions taken by the local child protective service in response to his report. The amount of detail such summary contains shall depend on the source of the report and shall be established by regulations of the state department. Any other person making a report shall be entitled to learn the general disposition of such report.<sup>150</sup>

#### *E. Sealing, Expunging, Removing, and Updating Register Data*

In an effort to prevent the misuse of register records, a growing number of states are developing procedures for the sealing, expunction, and removal of records. Almost invariably, these procedures apply only to central register records; they are not considered necessary for local agency case records which are perceived as having less potential for misuse than centralized data banks.<sup>151</sup> At present, eighteen of the thirty-nine states and three other jurisdictions which have set up their central registers by statute have made statutory provision for the destruction, sealing, expunction, or amendment of information.

Often, action is taken after the child reaches a certain age. With respect to children who have reached the age of eighteen, two jurisdictions destroy all records;<sup>152</sup> four allow access only if a sibling or offspring is reported;<sup>153</sup> one expunges all identifying information;<sup>154</sup> three expunge information with certain conditions attached;<sup>155</sup> and one gives the department the power to "purge reports."<sup>156</sup> Four jurisdictions seal records no later than when the child reaches the age of twenty-eight.<sup>157</sup>

150. Draft Model Act, *supra* note 28, at § 24(c).

151. *Cf.* Draft Model Act, *supra* note 28, at § 21(j).

152. ARIZ. REV. STAT. § 8-546.03(A), (B) (1974); VT. STAT. ANN. tit. 13, § 1356 (Supp. 1977).

153. ARK. STAT. ANN. § 42-818 (Supp. 1975); COLO. REV. STAT. § 19-10-114 (Cum. Supp. 1976); N.Y. SOC. SERV. LAW § 422(4) (McKinney 1976 & Supp. 1977-78); A.S. CODE tit. 21, § 2912(a)-(c) (1977).

154. 11 PA. CONS. STAT. ANN. § 2214 (Purdon Supp. 1977).

155. Act 2-53, § 201, 24 D.C. REGISTER 748 (July 22, 1977); MASS. GEN. LAWS ANN. ch. 119, § 51 B(5), F (West 1978-79); MICH. STAT. ANN. § 722.627(1) (Supp. 1977).

156. TENN. CODE ANN. § 37-1208 (Supp. 1977).

157. ARK. STAT. ANN § 42-818 (Supp. 1975); COLO. REV. STAT. § 19-10-114 (Cum. Supp.

Other jurisdictions, take action at a specified time after the last report is made. Three jurisdictions expunge identifying information seven years after the last report,<sup>158</sup> although two attach other conditions;<sup>159</sup> and two jurisdictions seal all records ten years after the last report.<sup>160</sup>

Investigations which determine that reports are unfounded are another basis for taking action. Four jurisdictions destroy all records if the report is discovered to be unfounded;<sup>161</sup> ten expunge identifying information.<sup>162</sup>

Although there is increasing recognition of the need to inform the subjects of a report that they have been entered in the register,<sup>163</sup> at this writing only five jurisdictions require that subjects of a report be given notice that they are listed in the register;<sup>164</sup> four require that persons listed be informed of their rights to challenge the contents of the file.<sup>165</sup> Eleven jurisdictions allow subjects to request that their files be amended, sealed, or expunged;<sup>166</sup> and nine jurisdictions give subjects the right to a hearing if their request is denied.<sup>167</sup>

Six jurisdictions give the head of the department which operates the register the power to amend, seal or expunge records "upon good cause shown," and with notice to the subject of the report.<sup>168</sup>

The absence of updated or follow-up reports indicating whether the initial report was valid is a grave shortcoming of most register systems, creating great potential for misuse. Storing such raw, unverified

1976); NEV. REV. STAT. § 432.100 (1977); N.Y. SOC. SERV. LAW § 422 (McKinney 1976 & Supp. 1977-78).

158. *E.g.*, 1977 S.C. Acts, § 13(B).

159. *E.g.*, MD. ANN. CODE art. 27, § 35A(i) (1976).

160. *E.g.*, FLA. STAT. ANN. § 827.07(7) (West 1976).

161. IOWA CODE ANN. § 235a.1 to .14, .22 to .24 (West Supp. 1977-78); N.H. REV. STAT. ANN. § 169.44 (1976); VT. STAT. ANN. tit. 13, § 1356 (Supp. 1977); WYO. STAT. § 14-28.13(a), (b), (c) (Cum. Supp. 1977).

162. *E.g.*, ARK. STAT. ANN. § 42-818 (Supp. 1975); MICH. STAT. ANN. § 722.27(1) (Supp. 1977); 11 PA. CONS. STAT. ANN. § 2214 (Purdon Supp. 1977).

163. *See* *Sims v. State Dep't of Pub. Welfare*, 438 F. Supp. 1179 (S.D. Tex. 1977) and text accompanying note 123 *supra*.

164. Act 2-53, § 201, 24 D.C. REGISTER 748 (July 22, 1977); M.D. CODE art. 27, § 35 A(i) (1976); N.Y. SOC. SERV. LAW § 422 (McKinney 1976 & Supp. 1977-78); 11 PA. CONS. STAT. ANN. § 2214 (Purdon Supp. 1976); 1977 S.C. Act 187, § 13(B).

165. Act 2-53, § 201, 24 D.C. REGISTER 748 (July 22, 1977); N.Y. SOC. SERV. LAW § 422 (McKinney 1976 & Supp. 1977-78); 11 PA. CONS. STAT. ANN. § 2214 (Purdon Supp. 1977); 1977 S.C. Act 187, § 13(B).

166. *E.g.*, ARK. STAT. ANN. § 42-818 (Supp. 1975); MICH. STAT. ANN. § 722.627(1) (Supp. 1970); VT. STAT. ANN. tit. 13, § 1356 (Supp. 1977).

167. *E.g.*, IOWA CODE ANN. § 235a.12 to .14, .22 to .24 (West Supp. 1977-78); MICH. STAT. ANN. § 722.627(1) (Supp. 1977); N.Y. SOC. SERV. LAW § 422 (McKinney 1976 & Supp. 1977-78).

168. *E.g.*, ARK. STAT. ANN. § 42-818 (Supp. 1975); 11 PA. CONS. STAT. ANN. § 2214 (Purdon Supp. 1976); A.S. CODE tit. 21, § 2912(a)-(c) (1977).

data is an unnecessary infringement on the civil rights of every individual and family listed in the register. Furthermore, unverified previous reports are an unsound basis for diagnosis or evaluation and severely compromise the data upon which planners must make decisions because they provide an incomplete and inaccurate picture of the child protective caseload. Without the follow-up reports, sound management is impossible and there can be no real monitoring of the child protective agency's performance. Thus, besides the "automatic" procedures described above, many states are developing procedures to either seal, expunge, or remove inappropriate reports, often called "unfounded," "unsubstantiated," or "invalid."<sup>169</sup> Some states do not enter a case into the register until it has been substantiated. An increasing number of states also require periodic progress reports on open cases in order to update register records.

Unfortunately, contemporary child protective practices are not easily accommodated to such procedures. In the past, caseworkers did not have to determine the validity of reports before offering help, and, indeed, they still often attempt to avoid such difficult decisions. But recent statutory and administrative changes force workers to make prompt formal decisions concerning the validity of reports. To protect family rights, the child protective service usually is required to report to the central register within a specified time (often sixty days) its determination of whether the report was "indicated" or "unfounded." For example, Kentucky reports: "Presently if a case of suspected child abuse is not confirmed, we would attempt to remove the information from our central registry and from the computer."<sup>170</sup> In another state:

At the end of each year, each agency is sent a list of the alleged abuse situations that they reported as sustained. We then ask the agency to advise us whether we should destroy the record or if there is enough evidence to indicate that the record should be retained. This we recognize is a judgment decision that to a large degree depends upon circumstances. Currently our retention schedule for all other cases is to retain the record for ten years and the index cards for thirty years. This is subject to change and will probably be reviewed in the next several years.<sup>171</sup>

169. See, e.g., N.Y. SOC. SERV. LAW § 422(5) (McKinney 1976 & Supp. 1977-78). See generally Fraser, *supra* note 10, at 516 n.43; WIS. MANUAL, *supra* note 54, at § 1661.40(2)B(5) (removing reports from the register when the allegations have been "refuted").

170. Letter dated November 14, 1973, on file at the National Center on Child Abuse and Neglect, Department of Health, Education and Welfare, Washington, D.C.

171. Letter dated November 16, 1973, from a Wisconsin administrator, on file at the National Center on Child Abuse and Neglect, Department of Health, Education and Welfare, Washington, D.C.

Such procedures require a reasonable and predictable method for determining whether reports should be removed from the register. This is fair to endangered children as well as to the accused parents. States differ as to the test to be applied in determining the validity of the report, from "probable cause"<sup>172</sup> to "some credible evidence."<sup>173</sup>

The draft Model Act follows the provisions common in many states:

All cases in the central register shall be classified in one of four categories: "under investigation," "unfounded," "under care," or "closed," whichever the case may be. All information identifying the subjects of an unfounded report shall be expunged from the register forthwith. Identifying information on all other records shall be removed from the register no later than five years after the case is closed. However, if another report is received involving the same child, his sibling or offspring, or a child in the care of the same adults, the identifying information may be maintained in the register until five years after the subsequent case or report is closed.<sup>174</sup>

Since the state department is the agency primarily responsible for the utility and integrity of the information contained in the register, it should take steps, upon learning that a report was made maliciously or is otherwise inaccurate, to correct and, if appropriate, expunge the record. The draft Model Act therefore provides:

The central register may contain such other information which the state department determines to be in furtherance of the purpose of this Act. At any time, the statewide center may amend, expunge, or remove from the central register any record upon good cause shown and upon notice to the subjects of the report and the local child protective service.<sup>175</sup>

#### *F. The Rights of the Subjects of Reports*

Only with the informed vigilance of persons who are the subjects of reports can the accuracy of the information in the register be fully assured. As a matter of fundamental fairness, if not constitutional right, persons alleged to have abused or neglected their children ought to know what information a government agency is keeping about them. Thus, a subject of a report should be able to obtain a copy of all the information about him contained in the register at any time. Subjects

172. Compare N.C. GEN. STAT. §§ 110-119(2) (1978) (removal justified where investigation reveals abuse or neglect) and 11 PA. CONS. STAT. ANN. § 2214(h) (Purdon Supp. 1977) (same) with TENN. CODE ANN. § 37-1205 (Supp. 1977) ("reasonable grounds to believe").

173. E.g., ARK. STAT. ANN. § 42-818(A)(5) (Supp. 1975) ("some credible evidence"); MICH. COMP. LAWS ANN. § 722.627(2) (Supp. 1977) ("credible evidence"); N.Y. SOC. SERV. LAW § 422(5) (McKinney 1976 & Supp. 1977-78) ("some credible evidence").

174. Draft Model Act, *supra* note 28, at § 21 (f).

175. *Id.* at § 21(g).

of a report should have access to the record, even though it is "confidential." They should have the statutory right to review the contents of the record which relate to them.<sup>176</sup>

Nevertheless, this right of access should not be absolute. The identity of any person who made the report or who cooperated with the subsequent investigation should be withheld if disclosure of such information would be "likely to endanger the life or safety of such person."

The withholding of information should not be automatic, but should be based on the individual facts of each case. For example, if a neighbor who made a report were in danger of retaliation by the parents, the state department should be authorized not to identify him. The same would be true for a babysitter, teacher, or other person in daily contact with a subject of the report. In some situations, the detriment to the person reporting or cooperating in the investigation might entail potential psychological or social rather than physical harm. For example, disclosure to a parent that a grandparent or spouse reported the case or cooperated in the investigation might so disrupt family life as to be detrimental to the interests of all concerned. However, utmost care must be exercised so that such authority is not used as an excuse to improperly withhold information concerning the report and its handling. No information should be withheld concerning a report or statement made in bad faith.

In addition, the state department should be authorized to seek a court order prohibiting the release of information which the court finds likely to be harmful to the subject of a report. Such information might involve statements of relatives, psychiatric reports, or other information which, if known by the subject of the report, might cause mental anguish or harm.

The relevant section of the draft Model Act reads:

Upon request, a subject of a report shall be entitled to receive a copy of all information contained in the central register pertaining to his case. Provided, however, that the state department is authorized to prohibit the release of data that would identify or locate a person who, in good faith, made a report or cooperated in a subsequent investigation, when it reasonably finds that disclosure of such information would be likely to endanger the life or safety of such person. In addition, the state department may seek a court order from a court of competent jurisdiction prohibiting the release of any information which the court finds is likely to be harmful to the subject of the report.<sup>177</sup>

176. *Id.* at § 21; *See, e.g.*, N.Y. SOC. SERV. LAW § 422(7) (McKinney 1976 & Supp. 1977-78).

177. Draft Model Act, *supra* note 28, at § 21(h).

Subjects of a report should have the right to make appropriate application to amend or remove information from the register.<sup>178</sup> If their application is denied, they should have a right to an administrative hearing and, if their application is again denied, they should have a right to a court hearing.<sup>179</sup> Thus, the Connecticut Department of Social Services' Regulations provide that "the parents of a child reported [sic] suspected abused may request the Commissioner to remove their child's name from the registry. If the request is refused by the Commissioner on the basis of information learned, parents will be notified in writing of the refusal and the reasons for same."<sup>180</sup> New York's Child Protective Services Act of 1973 guarantees to children, parents, and other subjects of a report, a right to receive "a copy of all information contained in the central register,"<sup>181</sup> except that the State Commissioner is authorized "to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation which he reasonably finds will be detrimental to the safety or interests of such person."<sup>182</sup> In addition, the subject of a report "may request the commissioner to amend, seal or expunge the record of the report."<sup>183</sup> If the commissioner refuses to do so within thirty days, the subject has a "right to a fair hearing to determine whether the record of the report . . . should be amended or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with" the law.<sup>184</sup>

The relevant section of the draft Model Act provides:

At any time subsequent to the completion of the local agency's investigation, a subject of a report may request the state department to amend, expunge identifying information from, or remove the record of the report from the register. If the state department refuses to do so or does not act within thirty days, the subject shall have the right to a fair hearing within the state department whether the record of the report should be amended, expunged, or removed on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this Act. Such fair hearing shall be held within a reasonable time after the subject's request and at a reasonable place and hour. The appropriate local child protective service shall be given notice of the fair hearing. In such hearings, the burden of proving the accuracy and consistency of the record shall be on the

178. *See, e.g.*, N.Y. SOC. SERV. LAW § 422(8) (McKinney 1976 & Supp. 1977-78).

179. *Id.*

180. CONN. STATE WELFARE DEP'T, INFORMATION PACKET PREPARED FOR INSTRUCTING MANDATED REPORTERS TO THE CENTRAL REGISTER (unpublished and undated).

181. N.Y. SOC. SERV. LAW § 422(7) (McKinney 1976 & Supp. 1977-78).

182. *Id.*

183. *Id.* at § 422(8).

184. *Id.*

state department and the appropriate local child protective service. A juvenile court [family court or similar civil court] finding of child abuse or child neglect shall be presumptive evidence that the report was not unfounded. The hearing shall be conducted by the head of the state department or his designated agent, who is hereby authorized and empowered to order the amendment, expunction, or removal of the record to make it accurate or consistent with the requirements of this Act. The decision shall be made, in writing, at the close of the hearing, or within thirty days thereof, and shall state the reasons upon which it is based. Decisions of the state department under this section shall be subject to judicial review in the form and manner prescribed by the state procedure law.<sup>185</sup>

At the fair hearing, similar to those held to determine whether a recipient's public assistance can be terminated, the burden of proof is on the state department and the appropriate local child protective service; however, the fact that there was a previous juvenile court finding of child abuse or child neglect is presumptive evidence that the report was not unfounded. On the other hand, the fact that there was not a finding, including the fact that there was a dismissal, would have no effect on fair hearing determination, since the juvenile court quantum of proof is either a "preponderance of the evidence" or "beyond a reasonable doubt," both of which are greater than the "probable cause" test to determine whether or not a report is unfounded.

## V. CONCLUSION

The central register is an attractive technological solution to a complex social problem. But its potential is quickly exaggerated and its utility easily compromised. It is far easier to imagine and plan twenty-first century devices than it is to make the hard decisions necessary to improve child protective services.

As a special committee of the American Academy of Pediatrics described: "In general, communities and states lacking registries would like to have them; but those that have them are dissatisfied."<sup>186</sup>

Nothing is so striking as the failure of almost all existing central register systems to fulfill their stated statistical, diagnostic, and case monitoring functions. Nothing is more disappointing than to visit a much heralded central register only to find it hopelessly overwhelmed by a flood of cases that staff hardly has time to record and file—let alone monitor. Unprepared for the veritable avalanche of paper work caused by an upgraded reporting law and register—having insufficient professional and clerical staff, too few phone lines to enable callers to

185. Draft Model Act, *supra* note 28, at § 21(i).

186. Watson, *supra* note 96, at 93.

reach the register by the second or third try, and too little space in which to store the reports that are received—these registers are immobilized from the day they open.

The failure to realize the diagnostic potential of central registers is not necessarily because the theory is wrong, for it has never been adequately tested. Perhaps the concept of a central register to which protective workers, police, and concerned physicians can turn for diagnostic aid is neither necessary nor feasible. Whether the dangers of giving them access to registers outweighs the dangers of not doing so is a judgment individual states must make.

But there can be no doubt that an effective register could help child protective agencies save the lives of some children—nationally, perhaps as many as a few hundred each year—and stop the suffering of many more by aiding case assessment and agency planning and monitoring. Registers have not been used effectively because of widespread and legitimate wariness of personal data banks, because of ambivalence about the underlying theory of diagnostic need, but most importantly, because of administrative failure to organize registers properly.

Up until now, only a few states have used their central registers as modern management information and record keeping systems. Yet, as has been seen, such a system can be a prime tool for the immediate as well as long term improvement of a child protection system because it “connects” many disparate parts of an otherwise fragmented system. By keeping track of prior reports and treatment efforts and being available twenty-four hours a day, a modern information network can provide immediate, concrete assistance to child protective workers and others on the front line of child protection who need accurate and timely information upon which to base difficult decisions. By keeping track of how reports are handled, it can monitor the system’s overall performance and, at the same time, present at least a partial picture of the problems with which the system must deal. With a modern information system, the rational evaluation of agency and human needs can begin.

However, just as a central register can be used to upgrade a child protective system, so too can it be abused—through misuse or disuse. In many states, the existing register appears to be an unused and ignored appendage to the child protective system whose purpose no one can describe. Many of the functions assigned to central registers have been criticized as not worth the financial expense and possible compromise of civil liberties involved. Sometimes the attention paid to a reg-



ister reflects a desire to give the appearance of improving services without making the commitment (and spending the really large amounts of money) necessary to do so.

The mere establishment of a central register system, even the most elaborate and promising of systems, is not the end of the process of improving child protective services—it is hardly the beginning. It would be a cruel hoax if states were to exploit a register to give the appearance of improving services without making the institutional and financial commitments necessary to truly do so.

Finally, even a law is no guarantee that a register will function properly and serve the purpose for which it was created, especially if those purposes are imperfectly understood and the functions are given insufficient administrative support.<sup>187</sup> In an age when a person from New York can purchase a color TV in California and have a credit rating in New York checked in minutes, a central register can be operated as originally intended, but only if there is community-wide agreement on the need to do so. Unless there is a continued public and professional support and monitoring of the activities of a central register system—and protective services generally—there is the ever present danger that the system will once more atrophy.

Before an upgraded central register is established, concrete and broadly accepted decisions should be made about its functions and operations. In the past, designers of register systems have been either professional social workers (who are often amateurs in developing information systems) or data processing experts (who are largely ignorant of the needs of helping professionals). Inevitably, the central register has suffered, as has the entire child protection system.

The presence of a specialized group of data-processing professionals in an organization can create a constituency within the organization whose interests are served by any increase in data use, without much regard for the intrinsic value of the increased use. The point is underlined by an experience common to many organizations. Some unit is already operating a computer facility for accounting, processing scientific or engineering data, or for some other straightforward application to which the technology is well-adapted. Because the facility has extra computer time available, it is soon discovered that attractive software packages can be purchased to enable the computer to enlarge its scope and become a "management information system."<sup>188</sup>

187. See, e.g., NEW YORK STATE ASSEMBLY SELECT COMMITTEE ON CHILD ABUSE, REPORT 41 (1972).

188. Weinberger, *supra* note 30, at 23.

In the future, designers of a central register will have to involve themselves in a dialogue with all major groups who use the register and are affected by its operations, including protective workers, physicians, law enforcement officials, prosecutors, judges, supervisors, administrators, planners, researchers, legislators, parents, and the community at-large. The register must be designed to assist line staff, who must be helped to appreciate its benefits.<sup>189</sup> Although administrators and data specialists presumably appreciate the importance of the data collected, they are not the ones whose time, energy, and patience go into collecting, maintaining, and updating the data. And the quality of data depends on the willing cooperation of those who collect it. Balancing these competing and sometimes inconsistent needs will be an educational process for both the data processing and child protective professionals. Only through the creative tension of such a joint dialogue can a fully successful central register system be born.

Unless states planning to upgrade their central registers use such a joint dialogue to re-think their registers' role in light of recent developments and their real needs, the new registers they create may be as irrelevant to improved child protective services as many of their smaller, less sophisticated, less expensive, and less controversial predecessors.

189. "Between registry and worker there should be feed-back that is constructive and informative. Between worker and registry there must be confidence and communication." Ireland (1975), *supra* note 16, at 5.